

01:13PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

February 21, 2024

TRANSCRIPT EXCERPT - DIRECT TESTIMONY OF LOUIS SELVA - DAY 1
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY

BY: JOSEPH M. TRIPI, ESQ.

NICHOLAS T. COOPER, ESQ.

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And

UNITED STATES DEPARTMENT OF JUSTICE

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And

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BY: PARKER ROY MacKAY, ESQ.

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For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent

MARILYN K. HALLIDAY, HSI Special Agent

KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK: REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

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* * * * *

(Excerpt commenced at 1:13)

(Jury seated at 1:13 p.m.)

THE COURT: Welcome back. The record will reflect
that all our jurors are present. And the government can call
its next witness.

MR. TRIPI: The government calls Louis Selva,
Your Honor.

L O U I S S E L V A, having been duly called and sworn,
testified as follows:

MR. TRIPI: You ready, Your Honor?

THE COURT: You may.

MR. TRIPI: Thank you.

DIRECT EXAMINATION BY MR. TRIPI:

Q. Good afternoon, Mr. Selva.

A. Good afternoon.

01:14PM 1 Q. I'm going to ask you to keep your voice up to the best of
01:14PM 2 your ability to make sure we all hear you.
01:14PM 3 A. Okay.
01:14PM 4 Q. Mr. Selva, how old are you?
01:14PM 5 A. 59.
01:14PM 6 Q. Where did you grow up?
01:14PM 7 A. North Buffalo.
01:15PM 8 Q. Do you know Joseph Bongiovanni?
01:15PM 9 A. Yes.
01:15PM 10 Q. How do you know him?
01:15PM 11 A. We grew up together.
01:15PM 12 Q. How long have you known him?
01:15PM 13 A. Since grade school, sixth grade.
01:15PM 14 Q. How many years is that?
01:15PM 15 A. 45.
01:15PM 16 Q. Do you see Mr. Bongiovanni in court?
01:15PM 17 A. I do.
01:15PM 18 Q. Can you please point to him and describe something he's
01:15PM 19 wearing?
01:15PM 20 A. He's wearing a suit and a tie, next to his attorneys.
01:15PM 21 Q. What color tie does he have on?
01:15PM 22 A. Gray or blue.
01:15PM 23 Q. Is he sitting in the middle?
01:15PM 24 A. Yeah, sitting in the middle.
01:15PM 25 **MR. TRIPI:** Your Honor, may the record reflect that

the witness has identified the defendant.

THE COURT: It does.

BY MR. TRIPI:

Q. Can you describe or characterize your relationship with Mr. Bongiovanni through most of your life?

A. We grew up together, grammar school through high school.

Q. How close were you?

A. We were best friends.

Q. How far have you gone in school, Mr. Selva?

A. I did not graduate, I finished three years of college.

Q. So you went to three years of college?

A. Yes.

Q. Where did you attend your three years of college?

A. Buff State, and Mesa Community College in Arizona.

Q. Okay. What was first, Mesa Community College?

A. No, Buff State, and then I went out to Arizona and I was there for two years and went to Mesa Community.

Q. You've indicated that you've known the defendant since grammar school. Where did you go to grammar school?

A. P.S. 81.

Q. Where is that?

A. Tacoma.

Q. And where is Tacoma?

A. In North Buffalo.

Q. Is North Buffalo a part of the City of Buffalo?

01:16PM

1 A. Yes, sir.

01:16PM

2 Q. What kind of neighborhood is that?

01:16PM

3 A. At the time, it was predominantly an Italian

01:16PM

4 neighborhood.

01:16PM

5 Q. And what -- which streets did you grow up on North

01:17PM

6 Buffalo?

01:17PM

7 A. Commonwealth and Tennyson.

01:17PM

8 Q. Those are two different streets?

01:17PM

9 A. Yes. First Commonwealth, then we had moved to Tennyson

01:17PM

10 when I was older.

01:17PM

11 Q. And which street did the defendant grow up on in North

01:17PM

12 Buffalo?

01:17PM

13 A. Lovering.

01:17PM

14 Q. Where is Lovering in relation to Commonwealth?

01:17PM

15 A. Right around the corner.

01:17PM

16 Q. Where is Lovering in relation to Tennyson?

01:17PM

17 A. A few streets down. Four blocks away. Three or four

01:17PM

18 blocks away, but in the same neighborhood. Between Delaware

01:17PM

19 and Colvin.

01:17PM

20 Q. So when you moved, you didn't move far?

01:17PM

21 A. No.

01:17PM

22 Q. And what grade was it that you said you met the defendant

01:17PM

23 in?

01:17PM

24 A. Sixth.

01:17PM

25 Q. Sixth grade? How often did you spend together from the

01:17PM 1 time you met him in sixth grade?

01:17PM 2 A. At school we'd see each other. Together weekends,

01:17PM 3 summers. You know, we'd hang out.

01:17PM 4 Q. How many days a week did you hang out?

01:17PM 5 A. Well, during school, we'd see each other at school. And

01:17PM 6 then socially, you know, we were kids, so --

01:18PM 7 Q. So did you see him every day in school and on weekends?

01:18PM 8 How did that work? Explain it.

01:18PM 9 A. Yes. Every day in school and on the weekends. After

01:18PM 10 school sometimes.

01:18PM 11 Q. Now, where did you go to high school?

01:18PM 12 A. I started at Saint Joe's.

01:18PM 13 Q. Where did the defendant go to high school?

01:18PM 14 A. Saint Joe's.

01:18PM 15 Q. When you first were -- when you were first deciding where

01:18PM 16 to go to high school, did you discuss that with the

01:18PM 17 defendant?

01:18PM 18 A. Briefly. I mean, we took the entrance exam for

01:18PM 19 Saint Joe's. Not together, but we took it.

01:18PM 20 Q. You're the same year though?

01:18PM 21 A. Yes.

01:18PM 22 Q. And how long did you stay at Saint Joe's?

01:18PM 23 A. Freshman year.

01:18PM 24 Q. And was the defendant part of your freshman class?

01:18PM 25 A. Yes.

01:18PM 1 Q. How long did he stay at Saint Joe's?

01:18PM 2 A. Freshman year.

01:18PM 3 Q. Where did you go next for high school?

01:18PM 4 A. Canisius.

01:18PM 5 Q. So you went to the across-town rival?

01:19PM 6 A. Yes.

01:19PM 7 Q. What year were you there?

01:19PM 8 A. For my sophomore year.

01:19PM 9 Q. Where did the defendant go for his sophomore year?

01:19PM 10 A. Canisius.

01:19PM 11 Q. And did you stay at Canisius, or did you go somewhere

01:19PM 12 else after that?

01:19PM 13 A. No, junior year, I transferred again to Cardinal O'Hara.

01:19PM 14 Q. And where did the defendant go for his junior year?

01:19PM 15 A. Cardinal O'Hara.

01:19PM 16 Q. Did you graduate from Cardinal O'Hara?

01:19PM 17 A. I left in January. I was short, I think, a biology

01:19PM 18 course or something. So I transferred to Bennett, and I got

01:19PM 19 my diploma from Bennett.

01:19PM 20 Q. You graduated from Bennett?

01:19PM 21 A. Yes.

01:19PM 22 Q. And where did the defendant graduate from?

01:19PM 23 A. I believe Cardinal O'Hara.

01:19PM 24 Q. What year did you graduate?

01:19PM 25 A. '82.

01:19PM 1 Q. Was the defendant also class of '82, but at Cardinal
01:20PM 2 O'Hara?

01:20PM 3 A. Yes.

01:20PM 4 Q. How old were you when you graduated high school?

01:20PM 5 A. 17.

01:20PM 6 Q. What did you do immediately after high school?

01:20PM 7 A. I was in the Air Force.

01:20PM 8 Q. How long were you in the Air Force?

01:20PM 9 A. For a time, six months.

01:20PM 10 Q. And were you discharged?

01:20PM 11 A. They called it a general release.

01:20PM 12 Q. Okay. And describe what you did in the Air Force.

01:20PM 13 A. Attended basic training, and then tech school. The MOS
01:20PM 14 was an administrative position dealing with accounting.

01:20PM 15 Q. What do you mean by MOS?

01:20PM 16 A. The job you were training for.

01:20PM 17 Q. And what was the job you were training for there?

01:20PM 18 A. For accounting.

01:20PM 19 Q. So to be an accountant in the Air Force?

01:20PM 20 A. Yes, to deal with financial aspects of the Air Force.

01:20PM 21 Q. And why did you leave the Air Force?

01:20PM 22 A. It was something that -- I was having -- I didn't really
01:21PM 23 understand the realm of it, I wasn't doing well in the course
01:21PM 24 structure, and they gave me a general release. They let me
01:21PM 25 part ways.

01:21PM 1 Q. Did you do anything wrong in the Air Force?

01:21PM 2 A. No. No. There was no dishonorable discharge or anything
01:21PM 3 like that, I was actually able to reenlist if I wanted to go
01:21PM 4 in the Army or Marine Corps or something like that, but I
01:21PM 5 didn't, I came back home.

01:21PM 6 Q. And so after leaving the Air Force, you said you came
01:21PM 7 back home. Where did you go?

01:21PM 8 A. I enrolled in Buff State in the fall.

01:21PM 9 Q. And what year does this bring you to?

01:21PM 10 A. '83.

01:21PM 11 Q. What did you study while you were at Buff State?

01:21PM 12 A. Just general courses, I was not a full-time student. I
01:21PM 13 was taking two or three courses, just to get matriculated.

01:21PM 14 Q. Were you working also?

01:21PM 15 A. I was, yes.

01:21PM 16 Q. What was your job?

01:22PM 17 A. When I came back, we had bought a -- I had bought a Jeep,
01:22PM 18 and I was doing snowplowing and just odd jobs at that time.

01:22PM 19 Q. Who were you doing the snowplowing with?

01:22PM 20 A. Myself. My father would help me, but I did it primarily.

01:22PM 21 Q. After doing that and going to Buff State and doing
01:22PM 22 snowplowing jobs, where did life take you next?

01:22PM 23 A. After? Well, then, I got into bartending. I was tending
01:22PM 24 bar. And then I moved out to Arizona.

01:22PM 25 Q. What took you to Arizona?

01:22PM 1 A. Opportunity. Not much was going on for me in Buffalo. I
01:22PM 2 wanted to get in -- try to get into Arizona State, so I went
01:22PM 3 to Mesa Junior College, and I was working out there.
01:22PM 4 Q. Where is Mesa Junior College located?
01:22PM 5 A. It's in Mesa, Arizona.
01:22PM 6 Q. What years were you out there?
01:22PM 7 A. '84 to '86. Two years.
01:23PM 8 Q. And you indicated you took classes there?
01:23PM 9 A. I did.
01:23PM 10 Q. What types of classes did you take?
01:23PM 11 A. General business.
01:23PM 12 Q. And what kind of job did you work?
01:23PM 13 A. That's -- I was in the bar business as well to pay my
01:23PM 14 rent and support myself.
01:23PM 15 Q. Now during that period of life, '84 to '86, sort of right
01:23PM 16 after high school there, were you still in touch with the
01:23PM 17 defendant?
01:23PM 18 A. Yes.
01:23PM 19 Q. How would you keep in touch with him?
01:23PM 20 A. By phone, back then there was no cell phones.
01:23PM 21 Q. So we're talking landline phones?
01:23PM 22 A. Landline phones, yes.
01:23PM 23 Q. And during that time of your life when you're out in
01:23PM 24 Arizona, where's the defendant living?
01:23PM 25 A. I believe he was in -- he was in Boston for a while.

01:23PM 1 Q. Do you know how long he spent in Boston?

01:23PM 2 A. Six months, maybe, I'm not quite sure.

01:24PM 3 Q. What's your understanding of what he was doing in Boston?

01:24PM 4 A. School and work, was taking classes and working.

01:24PM 5 Q. By 1986, are you back in Buffalo?

01:24PM 6 A. Yes.

01:24PM 7 Q. And at that point, when you get back to Buffalo around

01:24PM 8 1986, where's the defendant?

01:24PM 9 A. He's in Buffalo, as well.

01:24PM 10 Q. Did you spend time together when you were back in town

01:24PM 11 together?

01:24PM 12 A. Yes.

01:24PM 13 Q. From 1986 to about 1997, did you remain in Buffalo?

01:24PM 14 A. Yes.

01:24PM 15 Q. Did you work during that time?

01:24PM 16 A. I did.

01:24PM 17 Q. What type of jobs did you do?

01:24PM 18 A. In '86, I got back into bartending. And then I started a

01:24PM 19 career in sales.

01:24PM 20 Q. Where were you tending bar?

01:24PM 21 A. Well, I started at the Stuffed Mushroom on Main Street.

01:24PM 22 Q. Tell the jury what jobs you did.

01:25PM 23 A. I worked at the Stuffed Mushroom, and then I got a job in

01:25PM 24 sales at Ingram software, they were on Elmwood Avenue, as an

01:25PM 25 account rep, so I was doing both.

01:25PM 1 Then after that, I worked at Mickey Rats on Main
01:25PM 2 Street, that's another bar. So, and then I pursued -- I was
01:25PM 3 still working in sales.
01:25PM 4 Q. Please continue, tell the jury what other jobs you had in
01:25PM 5 sales and in bartending.
01:25PM 6 A. From that, from 1990 to '96, I worked in the wireless
01:25PM 7 business. I started off at NYNEX mobile which became
01:25PM 8 Frontier Cellular, which is Verizon Mobile today. Spent just
01:25PM 9 about seven years there. I worked on Walden Avenue as a
01:25PM 10 sales rep and a major account rep.
01:25PM 11 I was still tending bar on the side as well.
01:25PM 12 Q. Where were some other places you tended bar?
01:26PM 13 A. At that time, it was -- Stuffed Mushroom had closed, so I
01:26PM 14 would just kind of pick up banquets and periodically if
01:26PM 15 somebody needed help.
01:26PM 16 Q. What was your next job after that?
01:26PM 17 A. I moved to Las Vegas.
01:26PM 18 Q. Now, what year did you move to Las Vegas?
01:26PM 19 A. '97. From the -- I was still in the wireless business.
01:26PM 20 Q. Who were you working for?
01:26PM 21 A. I went out there and took a job with AllTell, which was
01:26PM 22 360 Communications, which is Verizon Mobile today.
01:26PM 23 Q. And before you went out to Las Vegas, did you get
01:26PM 24 married?
01:26PM 25 A. Yes.

01:26PM 1 Q. What year did you get married?

01:26PM 2 A. '92.

01:26PM 3 Q. And when you were in Las Vegas, how long were you there?

01:26PM 4 A. Two years.

01:26PM 5 Q. When you moved there, did you move with your wife?

01:27PM 6 A. Yes, my wife and both my kids.

01:27PM 7 Q. Okay. So you had two kids?

01:27PM 8 A. Two daughters, yes.

01:27PM 9 Q. How old were they when you moved?

01:27PM 10 A. My youngest was 18 months. And my oldest, she went to

01:27PM 11 kindergarten out there, was starting first grade.

01:27PM 12 Q. And what was your wife's name at the time?

01:27PM 13 A. Carol.

01:27PM 14 Q. And how long did you stay in Las Vegas?

01:27PM 15 A. Two years.

01:27PM 16 Q. When did you return to Buffalo?

01:27PM 17 A. '99. I believe 2000 -- '99, 2000, around that

01:27PM 18 time frame.

01:27PM 19 Q. And have you been in Buffalo from approximately 1999,

01:27PM 20 2000, to current day?

01:27PM 21 A. Yes.

01:27PM 22 Q. When you were, that window of time, from 1986 to 1997,

01:27PM 23 when you were working in the telecommunications industry as

01:28PM 24 well as bartending at different places, what was the

01:28PM 25 defendant doing? Where was he working?

01:28PM 1 A. Can you repeat the time frame?

01:28PM 2 Q. So from roughly '86 to '97, before you go out to

01:28PM 3 Las Vegas, what jobs did you understand the defendant to have

01:28PM 4 done during that window of time?

01:28PM 5 A. City of Buffalo, and I believe he was bartending, too.

01:28PM 6 Q. And where did he bar tend?

01:28PM 7 A. Bubble. Ramada Bubble, it's since closed. And I believe

01:28PM 8 a restaurant in Cheektowaga.

01:28PM 9 Q. When you say Ramada Bubble, what do you mean?

01:28PM 10 A. The Ramada Inn. The Bubble was a nightclub.

01:28PM 11 Q. Where was that located, the Ramada Inn?

01:28PM 12 A. It was on Transit.

01:28PM 13 Q. Sort of near the airport?

01:28PM 14 A. No, Transit and -- I forget, Transit and Main? That

01:28PM 15 area. It's been a while.

01:28PM 16 Q. Were you aware of any individual -- did you ever visit

01:29PM 17 him when he bar tended there?

01:29PM 18 A. Yes.

01:29PM 19 Q. Were you aware of any friends that the defendant had who

01:29PM 20 also bar tended there?

01:29PM 21 A. Yes.

01:29PM 22 Q. Who?

01:29PM 23 A. I believe Peter Gerace.

01:29PM 24 Q. I want to fast forward a little bit in time -- before I

01:29PM 25 do that, let me ask you right up front here, Mr. Selva, is

01:29PM 1 today an easy day for you?

01:29PM 2 A. No.

01:29PM 3 Q. Why not?

01:29PM 4 A. It's very hard.

01:29PM 5 Q. Explain for the jury why.

01:29PM 6 A. We were lifelong friends. You know, we were friends, and

01:29PM 7 I'm in this position now. A lot of emotion.

01:29PM 8 Q. Who put you in this position?

01:29PM 9 A. I put myself in it.

01:29PM 10 Q. I want to fast forward in time a little bit. Did there

01:29PM 11 come a point in time when you obtained a job at the Erie

01:30PM 12 County Sheriff's Office as a deputy?

01:30PM 13 A. Yes.

01:30PM 14 Q. What year did you become an Erie County Sheriff Deputy,

01:30PM 15 excuse me?

01:30PM 16 A. 2019.

01:30PM 17 Q. And what was your job there?

01:30PM 18 A. I was a deputy in the holding center.

01:30PM 19 Q. And what are your job -- what was your duty as a deputy

01:30PM 20 in the Erie County Holding Center?

01:30PM 21 A. Transport prisoners, oversee a unit, make sure the unit's

01:30PM 22 secured, follow all security protocols, feed them their

01:30PM 23 meals, bring them their meals, if they have to go to a

01:30PM 24 medical appointment, you escort them. So --

01:30PM 25 Q. Essentially guarding inmates?

01:30PM 1 A. Guarding inmates. That's the short answer, yes.

01:30PM 2 Q. In order to get that job, how old were you when you
01:30PM 3 started that job?

01:30PM 4 A. There was no age limit to it. I was 52.

01:30PM 5 Q. 52? In order to get that job, did you have to provide,
01:30PM 6 during the application process, character references?

01:31PM 7 A. Yes.

01:31PM 8 **MR. TRIPI:** If we can just, for Mr. Selva only, if we
01:31PM 9 can publish for him -- there will be a screen next to you, you
01:31PM 10 can see a document, for Mr. Selva only Exhibit 215.

01:31PM 11 **THE WITNESS:** Yes.

01:31PM 12 **BY MR. TRIPI:**

01:31PM 13 Q. Do you see that?

01:31PM 14 A. I do, yes.

01:31PM 15 Q. Mr. Selva, do you recognize Exhibit 215, Government
01:31PM 16 Exhibit 215?

01:31PM 17 A. I do.

01:31PM 18 Q. What do you recognize that to be?

01:31PM 19 A. Those are my references for the sheriff's department.

01:31PM 20 Q. How do you recognize that to be the references you
01:31PM 21 provided in your application for the sheriff's office?

01:31PM 22 A. That's my handwriting, and I initialed it.

01:31PM 23 Q. Did you prepare that page of the application?

01:31PM 24 A. I did.

01:31PM 25 Q. Is that other -- is a part of that redacted that has

addresses and phone numbers for your references?

A. Yes.

Q. Other than that redaction, is that a fair and accurate copy of the list of references that you provided when you applied to become an Erie County Sheriff's Office member?

A. Yes.

MR. TRIPI: The government offers Exhibit 215, Your Honor.

MR. SINGER: No objection.

THE COURT: It's received without objection.

(GOV Exhibit 215 was received in evidence.)

MR. TRIPI: Please publish for the jury with the Court's permission.

THE COURT: Is it just this page?

MR. TRIPI: Just this page, Judge.

THE CLERK: You're all set.

MR. TRIPI: Thank you. Ms. Champoux, can you amplify the bottom third, the boxes there?

BY MR. TRIPI:

Q. How many references did you provide in your application process, Mr. Selva?

A. Three.

Q. And who were the references you provided?

A. Joseph Bongiovanni, Mark Grisanti, and Thomas Phillips.

Q. And so the top name you provided is the defendant?

01:32PM 1 A. Yes.

01:32PM 2 Q. And what -- what did you list as his occupation?

01:32PM 3 A. Special Agent, United States Drug Enforcement, DEA.

01:32PM 4 Q. And that's where he worked at the time?

01:32PM 5 A. Yes.

01:32PM 6 Q. And under the box, that says years known. How many years
01:32PM 7 did you list as of the time of your application?

01:32PM 8 A. 45.

01:32PM 9 Q. Okay. And the two other references you have there, just
01:33PM 10 generally who are they?

01:33PM 11 A. Mark Grisanti, and Thomas Phillips, one was a New York
01:33PM 12 State Court of Claims judge, and the other one was chief of
01:33PM 13 police of Kenmore.

01:33PM 14 **MR. TRIPI:** Okay. We can take that down.

01:33PM 15 **BY MR. TRIPI:**

01:33PM 16 Q. Out of those three references, who were you closest with?

01:33PM 17 A. Joseph, the defendant.

01:33PM 18 Q. This defendant? Who knew you the best?

01:33PM 19 A. The defendant.

01:33PM 20 Q. Who had you spent the most time with?

01:33PM 21 A. The defendant.

01:33PM 22 Q. Who had you shared the most intimate details of your life
01:33PM 23 with?

01:33PM 24 A. The defendant.

01:33PM 25 Q. Have you ever been a character reference for the

24 **MR. SINGER:** Object to hearsay, relevance,
25 authenticity.

01:34PM 1 **MR. TRIPI:** The witness has personal knowledge under
01:34PM 2 901A, there are no an assertions, there is no hearsay, it is a
01:34PM 3 list of references.

01:34PM 4 **MR. SINGER:** Your Honor, Mr. Selva can attest to
01:34PM 5 perhaps some of the writing that he --

01:35PM 6 **MR. TRIPI:** Your Honor, if we're going to have
01:35PM 7 extended argument, I'd ask that we approach.

01:35PM 8 **THE COURT:** Yeah, why don't we approach.
01:35PM 9 (Sidebar discussion held on the record.)

01:35PM 10 **THE COURT:** So, a couple things concern me. One is
01:35PM 11 unlike the last one, the phones numbers are on this one. We
01:35PM 12 shouldn't file this, especially because these things are now
01:35PM 13 going to be public.

01:35PM 14 **MR. TRIPI:** It could be redacted after.

01:35PM 15 **THE COURT:** That's what I'm thinking.

01:35PM 16 **MR. TRIPI:** Yeah.

01:35PM 17 **THE COURT:** And then number two, do we need the other
01:35PM 18 names on it?

01:35PM 19 **MR. TRIPI:** No, we don't.

01:35PM 20 **THE COURT:** So why don't we redact everything other
01:35PM 21 than Mr. Selva's section, we can blow that up, and have the
01:35PM 22 jury see --

01:35PM 23 **MR. TRIPI:** I don't think we can -- I have no problem
01:35PM 24 with that, but we can't redact on the fly in the program we
01:35PM 25 have, so if we can just do that later, that's fine.

01:35PM 1 **THE COURT:** Can't we just blow it up so that's all we
01:35PM 2 can see?

01:35PM 3 **MR. TRIPI:** Absolutely. We need to show the top so
01:35PM 4 he sees it's Joseph Bongiovanni.

01:35PM 5 **THE COURT:** Sure.

01:35PM 6 **MR. TRIPI:** And then just the middle section.

01:35PM 7 **THE COURT:** We can blow it up before the jury sees
01:35PM 8 it.

01:35PM 9 **MR. TRIPI:** That's fine. No problem with that Judge.

01:35PM 10 **THE COURT:** Any problem with that?

01:35PM 11 **MR. SINGER:** Beyond my objection, Judge, no.

01:36PM 12 **THE COURT:** Pardon me?

01:36PM 13 **MR. SINGER:** Beyond my objection, no.

01:36PM 14 **THE COURT:** Well, I'm not so sure the objection
01:36PM 15 was -- the objection was to the other people, I think.

01:36PM 16 **MR. SINGER:** Well, it was to other people, but within
01:36PM 17 the form itself, it appears like it's a business record. I
01:36PM 18 don't think Mr. Selva can lay the appropriate foundation for a
01:36PM 19 business record. He might be able to recognize his signature
01:36PM 20 on it, but that only solves one layer of the authenticity of
01:36PM 21 the document itself.

01:36PM 22 **THE COURT:** But I don't think it's coming in as a
01:36PM 23 business record. It's coming in that he was a reference.
01:36PM 24 It's corroboration of his testimony.

01:36PM 25 Is this the pistol permit?

01:36PM

1

MR. TRIPI: Yeah.

01:36PM

2

THE COURT: So it's his corroboration of his

01:36PM

3

testimony?

01:36PM

4

MR. TRIPI: There's no assertion in the document,

01:36PM

5

Judge. A name, a phone number, and a signature are not an

01:36PM

6

assertion of anything, it's just a list. So, there's no

01:36PM

7

hearsay.

01:36PM

8

MR. SINGER: I think it's also improper bolstering.

01:36PM

9

He testified to this, he hasn't been challenged on the --

01:36PM

10

THE COURT: I'm going to let it in. I'm going to let

01:36PM

11

it in. I think it's pretty innocuous. I'm not -- there may

01:37PM

12

be an objection there, Mr. Singer, but I think that it's

01:37PM

13

innocuous enough to let it in, and it is corroborative of what

01:37PM

14

you said, so I don't think it's a problem. But I'm only going

01:37PM

15

to let in the portion that acknowledges Mr. Selva. Okay?

01:37PM

16

MR. TRIPI: We can do the top.

01:37PM

17

THE COURT: You can do the top, and you can show them

01:37PM

18

his portion.

01:37PM

19

MR. TRIPI: Okay.

01:37PM

20

THE COURT: Fine.

01:37PM

21

(End of sidebar discussion.)

01:37PM

22

THE COURT: So the objection is sustained in part and

01:37PM

23

overruled in part, you're gonna see what I'll allow you to

01:37PM

24

see.

01:37PM

25

MR. TRIPI: Your Honor, subject to those limitations

1 and with the Court's permission, we will publish for the jury
2 just the top portion that's of the applicant's name.

3 No. Yep.

4 **THE COURT:** Okay.

5 **BY MR. TRIPI:**

6 Q. Mr. Selva, do you see that portion of the exhibit?

7 A. Yes.

8 **THE COURT:** Is there way we can do that, or no?

9 **THE CLERK:** You can see the background? They can
10 still see it.

11 **MR. TRIPI:** Does that work for now, Your Honor?

12 **THE COURT:** Sure does.

13 **MR. TRIPI:** Is that okay?

14 **THE COURT:** Yeah. Any problem based on my ruling.

15 **MR. SINGER:** Can we move it down another quarter
16 inch.

17 **THE COURT:** Oh, yeah. Great.

18 **MR. SINGER:** I think that probably works, Judge.

19 **MR. TRIPI:** Your Honor, just for the record, we are
20 publishing 143A-1, we will redact other portions of it for the
21 Court record. We are only publishing the header of the
22 document which states the applicant's name, and phone number,
23 address. And the title of the document is character
24 references. And then we are publishing the portion related to
25 Mr. Selva.

01:39PM

1

BY MR. TRIPI:

01:39PM

2

Q. So now I'll pose to you, Mr. Selva, the question: The

01:39PM

3

information that you listed there, is that where you lived at

01:39PM

4

the time and phone numbers you had at the time?

01:39PM

5

A. Yeah, correct, yes.

01:39PM

6

Q. And is that your signature?

01:39PM

7

A. It is.

01:39PM

8

Q. And that was so that you could be contacted as a

01:39PM

9

reference for Mr. Bongiovanni?

01:39PM

10

A. Yes.

01:39PM

11

Q. And in the course of that pistol permit application, were

01:39PM

12

you in fact contacted?

01:39PM

13

A. I believe I was, yes.

01:39PM

14

Q. And did you serve as a character reference?

01:39PM

15

A. I did.

01:39PM

16

MR. TRIPI: Great. We can take that whole exhibit

01:39PM

17

down. And, Judge, we'll marry that redaction up later.

01:39PM

18

BY MR. TRIPI:

01:39PM

19

Q. Now, I'd like to fast forward from that point in time.

01:39PM

20

I'm -- how many years ago approximately was the reference,

01:39PM

21

the pistol permit reference?

01:39PM

22

A. It was in the mid '90s, I believe.

01:40PM

23

Q. Is that your best estimate?

01:40PM

24

A. That's my best estimate. I don't recall exactly.

01:40PM

25

Q. Okay. Fast forwarding from there to February of 2015,

01:40PM 1 did you attend Mr. Bongiovanni's wedding in February of 2015?

01:40PM 2 A. Yes.

01:40PM 3 Q. Where was that wedding?

01:40PM 4 A. Cabo San Lucas.

01:40PM 5 Q. Where? What country?

01:40PM 6 A. I'm sorry, Mexico. Mexico, Cabo San Lucas.

01:40PM 7 Q. Did you have a role in that wedding?

01:40PM 8 A. Yes.

01:40PM 9 Q. What was your role in that wedding?

01:40PM 10 A. The best man.

01:40PM 11 Q. Did you take pictures at the wedding?

01:40PM 12 A. Yes.

01:40PM 13 Q. At some point after the wedding, did you use your Twitter

01:40PM 14 feed and tweet pictures of yourself and Mr. Bongiovanni at

01:40PM 15 the wedding?

01:40PM 16 A. Yes.

01:40PM 17 Q. I'm going to hand you exhibits. These will be exhibits

01:40PM 18 213-1 through 213-5.

01:40PM 19 **MR. TRIPI:** One moment, please, Your Honor.

01:40PM 20 I'm going to show the defense counsel, and then I'll

01:41PM 21 hand them up. Now handing the exhibits up to the witness.

01:41PM 22 **BY MR. TRIPI:**

01:41PM 23 Q. Mr. Selva, take a moment, look at Exhibits 213-1 through

01:41PM 24 213-5, if you can flip through each one, take a look at

01:41PM 25 those, and when you're done, look up.

01:42PM 1 Do you recognize those exhibits, 213-1 to 213-5?

01:42PM 2 A. Yes.

01:42PM 3 Q. What do you recognize those to be?

01:42PM 4 A. Pictures from the wedding.

01:42PM 5 Q. And who took those pictures?

01:42PM 6 A. I believe I did, or my -- with my phone.

01:42PM 7 Q. And did you later tweet those pictures?

01:42PM 8 A. Yes.

01:42PM 9 Q. Do those fairly and accurately depict photographs of the
01:42PM 10 wedding that you tweeted after the wedding?

01:42PM 11 A. Yes.

01:42PM 12 **MR. TRIPI:** Your Honor, the government offers 213-1
01:42PM 13 through 213-5.

01:42PM 14 **MR. SINGER:** No objection.

01:42PM 15 **THE COURT:** Received without objection.

01:42PM 16 **MR. TRIPI:** Thank you, Your Honor.

01:42PM 17 **(GOV Exhibits 213-1 to 5 were received in evidence.)**

01:42PM 18 **MR. TRIPI:** Ms. Champoux, are we able to publish
01:42PM 19 those? Can we zoom in on the top, please. Top photo.

01:43PM 20 Your Honor, with the Court's permission, I'm going to
01:43PM 21 hand the hard copies to the jury. The image looks a little
01:43PM 22 darker than the picture, so I'll pass those long.

01:43PM 23 **THE COURT:** That's fine.

01:43PM 24 **MR. TRIPI:** Thank you.

25

01:43PM

1

BY MR. TRIPI:

01:43PM

2

Q. Mr. Selva, understanding that there's a little shading on

01:43PM

3

the screen there, who's in that top photo?

01:43PM

4

A. Myself and Mr. Bongiovanni.

01:43PM

5

Q. And who's on the left, and who's on the right as we look

01:43PM

6

at the photo?

01:43PM

7

A. I'm on the left, and Mr. Bongiovanni's on the right --

01:43PM

8

Q. Okay.

01:43PM

9

A. -- as I look at it.

01:43PM

10

MR. TRIPI: Can we zoom out of there, Ms. Champoux.

01:43PM

11

BY MR. TRIPI:

01:43PM

12

Q. And now there's a picture, it's a little clearer, there's

01:43PM

13

a photo on the bottom, is that a photo of you at the wedding?

01:43PM

14

A. Yes.

01:43PM

15

Q. And who else is in that photo?

01:43PM

16

A. Mr. Bongiovanni's sisters and a friend, Ray Castiglione.

01:43PM

17

Q. And you're wearing a suit in that photo?

01:44PM

18

A. Yes.

01:44PM

19

Q. Well, what, if anything, was significant about that suit?

01:44PM

20

A. Significant? Well, it was purchased by Mr. Bongiovanni

01:44PM

21

for the whole wedding party.

01:44PM

22

Q. So did the men in the wedding party have matching suits?

01:44PM

23

A. Yes.

01:44PM

24

Q. Who purchased the suits?

01:44PM

25

A. Mr. Bongiovanni.

01:44PM 1 Q. Where did he purchase the suits from?

01:44PM 2 A. Napoli's Men Shop.

01:44PM 3 Q. What's your understanding of Napoli's Men Shop?

01:44PM 4 A. It was his brother-in-law's place.

01:44PM 5 Q. Is that a nice place?

01:44PM 6 A. It's a nice place, it's a high-end men's shop.

01:44PM 7 Q. And do you know how much your suit cost that you were
01:44PM 8 wearing that day?

01:44PM 9 A. \$600? I don't know, \$500.

01:44PM 10 **MR. SINGER:** Your Honor, I'm going to object. There
01:44PM 11 hasn't been a proper foundation laid.

01:44PM 12 **THE COURT:** I'm sorry?

01:44PM 13 **MR. SINGER:** There hasn't been a proper foundation
01:44PM 14 laid to Mr. Selva's opinion as to the value.

01:44PM 15 **MR. TRIPI:** Do you know how much the suit cost? How
01:45PM 16 else do you ask that question?

01:45PM 17 **THE COURT:** No, overruled.

01:45PM 18 **MR. SINGER:** Judge --

01:45PM 19 **THE COURT:** Do you want to come up?

01:45PM 20 **MR. SINGER:** I don't think we -- the testimony was
01:45PM 21 that Mr. Bongiovanni purchased the suit for Mr. Selva.

01:45PM 22 **THE COURT:** Yes.

01:45PM 23 **MR. SINGER:** So, there has to be some foundation laid
01:45PM 24 as to how Mr. Selva knows the price.

01:45PM 25 **THE COURT:** Well, no, the question was, do you know.

01:45PM 1 And the answer was what it was.

01:45PM 2 Do you want to lay more of a foundation?

01:45PM 3 **MR. TRIPI:** Sure.

01:45PM 4 **THE COURT:** Go ahead, lay more of a foundation.

01:45PM 5 **BY MR. TRIPI:**

01:45PM 6 Q. Mr. Selva, did you have to get fitted for the suit?

01:45PM 7 A. Yes.

01:45PM 8 Q. Who did you get fitted for the suit with?

01:45PM 9 A. With the defendant, Mr. Bongiovanni.

01:45PM 10 Q. Were you there when he purchased the suit for you?

01:45PM 11 A. Yes.

01:45PM 12 Q. Based upon your going and getting fitted, did you go to

01:45PM 13 Napoli's?

01:45PM 14 A. Yes.

01:45PM 15 Q. And you went there with the defendant?

01:45PM 16 A. Yes.

01:45PM 17 Q. Were you there when he cashed out?

01:45PM 18 A. Yes.

01:45PM 19 Q. Did you observe him pay by credit card, check, or cash?

01:45PM 20 A. I believe it was credit card.

01:45PM 21 Q. And did he tell you or did you develop an understanding

01:45PM 22 of how much the suit cost?

01:45PM 23 A. He mentioned it.

01:45PM 24 Q. What did he say?

01:46PM 25 A. He said it was \$600.

01:46PM 1 Q. And how many people were in the wedding party?

01:46PM 2 A. Myself -- there were four. Four people.

01:46PM 3 Q. Who else was in the wedding party?

01:46PM 4 A. Tom, his -- Tom Napoli, his stepson, and obviously the
01:46PM 5 defendant. So, four.

01:46PM 6 Q. When you say his stepson, what's his name?

01:46PM 7 A. Matt.

01:46PM 8 Q. Okay. Were all of you together getting the suits at the
01:46PM 9 same time?

01:46PM 10 A. No. No.

01:46PM 11 **MR. TRIPI:** All right. We can go to the next one,
01:46PM 12 Ms. Champoux. 213-1, please.

01:46PM 13 And let's go to 213-3.

01:46PM 14 **BY MR. TRIPI:**

01:46PM 15 Q. We just talked about the wedding party, and you listed
01:46PM 16 that there were four people total, yourself, the defendant
01:46PM 17 and two others?

01:46PM 18 A. That's correct.

01:47PM 19 Q. Is that depicted in the photo, the top portion of 213-3?

01:47PM 20 A. Correct.

01:47PM 21 **MR. TRIPI:** Okay. Can we zoom out? Can we go to
01:47PM 22 213-4. And 213-5.

01:47PM 23 **BY MR. TRIPI:**

01:47PM 24 Q. And who's depicted in 213-5?

01:47PM 25 A. Myself and the maid of honor.

01:47PM 1 Q. And who's that?

01:47PM 2 A. Lindsay sister's, Christie, I'm sorry.

01:47PM 3 **MR. TRIPI:** We can take that exhibit down, thank you.

01:47PM 4 **BY MR. TRIPI:**

01:47PM 5 Q. Now, Mr. Selva, are you here under the terms of a
01:47PM 6 cooperation agreement that you have?

01:47PM 7 A. To cooperate, to tell the truth.

01:47PM 8 Q. So is that answer yes?

01:47PM 9 A. Yes.

01:47PM 10 Q. Who's that agreement between?

01:47PM 11 A. Myself and the government.

01:47PM 12 Q. Generally speaking, what are the things that happened
01:47PM 13 prior to you entering that cooperation agreement?

01:48PM 14 A. My house was raided on August 23rd, 2019. I went down
01:48PM 15 the following Monday. And meetings were set up with myself
01:48PM 16 and the government and my attorney.

01:48PM 17 Q. That day that your house was, you said, raided, is that a
01:48PM 18 term you're using for a search warrant?

01:48PM 19 A. I'll rephrase that. The search warrant.

01:48PM 20 Q. Is that yes?

01:48PM 21 A. Yes.

01:48PM 22 Q. Okay. What happened to your position that day as an Erie
01:48PM 23 County Sheriff's Office Deputy?

01:48PM 24 A. I was picked up, I was picked up by the head of the
01:48PM 25 narcotics department, drove down to internal affairs, and I

01:48PM 1 resigned.

01:48PM 2 Q. What day of the week was that?

01:49PM 3 A. That was on a Monday I believe. Monday or Tuesday.

01:49PM 4 Q. August 23rd?

01:49PM 5 A. August 23rd, I'm not familiar with the exact day, Monday,

01:49PM 6 but it's August 23rd is the date.

01:49PM 7 Q. After that, did you get an attorney?

01:49PM 8 A. Yes.

01:49PM 9 Q. After that, within a couple of days, did you show up for

01:49PM 10 what's called a proffer meeting at the U.S. Attorney's

01:49PM 11 Office?

01:49PM 12 A. Yes.

01:49PM 13 Q. Generally speaking, I'm not asking you for all the names,

01:49PM 14 but who was at those -- the -- your first proffer?

01:49PM 15 A. Myself, my attorney, Leonard Zaccagnino, and the

01:49PM 16 government.

01:49PM 17 Q. By the government, you mean agents and prosecutors?

01:49PM 18 A. Yes.

01:49PM 19 Q. Now, the very first day that agents were at your house

01:49PM 20 executing a search warrant, did you give them an interview?

01:49PM 21 A. Yes.

01:50PM 22 Q. Were you completely truthful in that first interview at

01:50PM 23 your residence?

01:50PM 24 A. No.

01:50PM 25 Q. Did you withhold information?

01:50PM

1 A. Yes.

01:50PM

2 Q. A couple days later when you arrived at the U.S.

01:50PM

3 Attorney's Office, did you enter what's called a proffer

01:50PM

4 agreement?

01:50PM

5 A. Yes.

01:50PM

6 Q. And what's your understanding of a proffer agreement?

01:50PM

7 A. It's an agreement to tell the truth. There was -- I'm

01:50PM

8 going to be a cooperating witness.

01:50PM

9 Q. Okay. Under that letter, you agreed to provide

01:50PM

10 information and tell the truth?

01:50PM

11 A. Yes.

01:50PM

12 Q. During that first interview with your attorney and that

01:50PM

13 proffer letter being signed, did you tell the complete truth

01:50PM

14 in that interview?

01:50PM

15 A. No.

01:50PM

16 Q. As part of that proffer interview, that letter that you

01:51PM

17 signed, was there a provision where you agreed to take a

01:51PM

18 polygraph?

01:51PM

19 A. Yes.

01:51PM

20 Q. And were you asked to take a polygraph?

01:51PM

21 A. I was.

01:51PM

22 Q. I'm not going to ask you to get into the results of the

01:51PM

23 polygraph, but when you go to the polygraph, there's another

01:51PM

24 thing called a pre-test interview; is that right?

01:51PM

25 A. That's correct.

01:51PM 1 Q. And were you asked questions in that pre-test interview?

01:51PM 2 A. I was.

01:51PM 3 Q. Were you giving answers?

01:51PM 4 A. Yes.

01:51PM 5 Q. Were you truthful in that pre-test interview?

01:51PM 6 A. No.

01:51PM 7 Q. Then you took the polygraph, right?

01:51PM 8 A. Yes.

01:51PM 9 Q. And then there's something called a post-test interview,

01:51PM 10 right?

01:51PM 11 A. That's correct.

01:51PM 12 Q. Were you asked more questions?

01:51PM 13 A. Yes.

01:51PM 14 Q. Did you give more answers?

01:51PM 15 A. Yes.

01:51PM 16 Q. In the post-test interview, were you completely truthful?

01:51PM 17 A. No.

01:51PM 18 Q. As compared to the pre-test interview, how much -- were

01:51PM 19 you more truthful post-test?

01:51PM 20 A. Yes.

01:51PM 21 Q. Were you still withholding?

01:51PM 22 A. Yes.

01:51PM 23 Q. What information were you withholding in the post-test

01:52PM 24 interview?

01:52PM 25 A. My involvement and relationship with the defendant.

01:52PM 1 Information pertaining to questions that were being asked
01:52PM 2 about the case.

01:52PM 3 Q. After the polygraph, did you go to more proffer
01:52PM 4 interviews?

01:52PM 5 A. Yes.

01:52PM 6 Q. How many more, if you recall?

01:52PM 7 A. There was a bunch, I don't recall.

01:52PM 8 Q. During some of those additional proffer interviews, did
01:52PM 9 you withhold information?

01:52PM 10 A. Yes.

01:52PM 11 Q. Describe for the jury why you were -- withdrawn.

01:52PM 12 First describe for the jury what type of information you
01:52PM 13 were withholding in those interviews, explain it to them.

01:52PM 14 A. Information regarding my relationship with the defendant.

01:53PM 15 Q. In what context? What type of relationship were you
01:53PM 16 withholding?

01:53PM 17 A. Context to information if he accepted the bribes.

01:53PM 18 Q. Okay. You didn't -- you weren't withholding that you
01:53PM 19 were friends with him, right?

01:53PM 20 A. No.

01:53PM 21 **MR. SINGER:** Your Honor, object on bolstering
01:53PM 22 grounds. Improper bolstering.

01:53PM 23 **MR. TRIPI:** Judge, under Rule 607.

01:53PM 24 **THE COURT:** Overruled.

25

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BY MR. TRIPI:

Q. After a few more proffers, did you testify before a federal grand jury?

A. Yes.

Q. How did the amount of information during each interview leading up to grand jury change over time in your view?

A. I started to be more truthful. I just -- I became an open book, so to speak about it. I started to give more information.

Q. During the interviews where you did withhold information, lie, why did you do that?

A. Scared. Was torn. Wasn't thinking clearly still.

Q. What do you mean by you were scared?

A. You know, a lifelong -- there were questions regarding the defendant, lifelong relationship. Wasn't totally being honest at that point with the questions.

Q. Were you being asked questions about an individual also named Mike Masecchia?

A. Yes.

Q. Was that a factor?

A. It was a factor, yes.

Q. Explain it for the jury. How did that factor in?

A. Oh. Mr. Masecchia had a reputation, he was an Organized Crime figure. Made man, as far as I knew. Other people knew.

01:55PM 1 Q. How did that make you feel?

01:55PM 2 A. Scared.

01:55PM 3 Q. As you sit there today, do you feel that same way?

01:55PM 4 A. Yes.

01:55PM 5 Q. Ultimately on May 14th, 2020, did you enter that

01:55PM 6 cooperation agreement that we talked about?

01:55PM 7 A. Yes.

01:55PM 8 Q. What does that cooperation agreement that you signed

01:55PM 9 require of you?

01:55PM 10 A. To come forward and tell the truth.

01:55PM 11 Q. Prior to entering that cooperation agreement, were you

01:55PM 12 engaged in criminal activity for years prior to Homeland

01:55PM 13 Security executing that search warrant at your residence on

01:55PM 14 August 23rd, 2019?

01:55PM 15 A. Yes.

01:55PM 16 Q. Approximately how many years were you involved in

01:55PM 17 criminal activity?

01:55PM 18 A. Approximately, well, from 2008 to about 2017, '18. So --

01:56PM 19 what is that, that's eleven years.

01:56PM 20 Q. And what crimes were you involved in during that

01:56PM 21 time frame?

01:56PM 22 A. Cultivating and distributing marijuana.

01:56PM 23 Q. What else?

01:56PM 24 A. That that's -- that's it. We were in involved in

01:56PM 25 cultivating marijuana and moving it.

01:56PM 1 Q. And what role did you play, if any, in the defendant
01:56PM 2 joining that?

01:56PM 3 A. I reached out to him regarding getting information.

01:56PM 4 Q. Were you part of getting him to be -- withdrawn.

01:56PM 5 Were bribes involved?

01:56PM 6 A. Yes.

01:56PM 7 Q. Were you part of negotiating that?

01:56PM 8 A. Yes.

01:56PM 9 Q. Who were the principal people you were involved with in
01:56PM 10 the marijuana trafficking and the bribery?

01:57PM 11 A. Myself, Mike Masecchia, and Ron Serio.

01:57PM 12 Q. And who was the agent being bribed?

01:57PM 13 A. Joseph Bongiovanni.

01:57PM 14 Q. This defendant?

01:57PM 15 A. Yes.

01:57PM 16 Q. I'd like to take a step back and focus a little more on
01:57PM 17 your relationship with the defendant.

01:57PM 18 When you and the defendant grew up in that North Buffalo
01:57PM 19 neighborhood, were -- did you have common friends?

01:57PM 20 A. Yes.

01:57PM 21 Q. Were your friends predominantly also of Italian descent
01:57PM 22 from that neighborhood?

01:57PM 23 A. Yes.

01:57PM 24 Q. How many friends would you say you had in common with the
01:57PM 25 defendant growing up?

01:57PM 1 A. A whole neighborhood. I mean, quite a few.

01:57PM 2 Q. Was Mike Masecchia a childhood friend?

01:57PM 3 A. Yes.

01:57PM 4 Q. Did you know him?

01:57PM 5 A. Yes.

01:57PM 6 Q. Did the defendant know him?

01:58PM 7 A. Yes.

01:58PM 8 Q. Who knew Masecchia first, if you know?

01:58PM 9 A. I don't know. I mean, we were all from the same

01:58PM 10 neighborhood.

01:58PM 11 Q. Where did Masecchia grow up?

01:58PM 12 A. On Colvin.

01:58PM 13 Q. Is that in North Buffalo?

01:58PM 14 A. That's in North Buffalo not far from where we lived.

01:58PM 15 Q. In relation to age, is Masecchia older or younger than

01:58PM 16 you?

01:58PM 17 A. He's two years younger.

01:58PM 18 Q. And are you the same age as the defendant?

01:58PM 19 A. Yes.

01:58PM 20 Q. In addition to Masecchia, can you talk about any other

01:58PM 21 common friends that you had with the defendant growing up

01:58PM 22 into your high school, teenage years?

01:58PM 23 A. Common? Good, God, there was a group of us.

01:58PM 24 Q. Let me ask you some names, okay?

01:58PM 25 A. Yes.

01:58PM 1 Q. Who's Joe --

01:58PM 2 **MR. SINGER:** Objection, leading.

01:59PM 3 **THE COURT:** What's the question? Who's Joe?

01:59PM 4 **MR. TRIPI:** I didn't get the question out.

01:59PM 5 **THE COURT:** Go ahead ask the question.

01:59PM 6 **MR. TRIPI:** Who is Joe Tomasello?

01:59PM 7 **THE COURT:** That's leading?

01:59PM 8 **MR. SINGER:** Withdrawn.

01:59PM 9 **THE WITNESS:** He's a friend from the neighborhood
01:59PM 10 that we all knew.

01:59PM 11 **BY MR. TRIPI:**

01:59PM 12 Q. I'm asking you about you and the defendant right now.

01:59PM 13 A. Yes, we both knew him.

01:59PM 14 Q. When you say friend from the neighborhood, what
01:59PM 15 neighborhood are you referring to?

01:59PM 16 A. Again, from North Buffalo, to be clear.

01:59PM 17 Q. How old were you and the defendant approximately when Joe
01:59PM 18 Tomasello became a friend?

01:59PM 19 A. Late 20s, 30s. Late 20s.

01:59PM 20 Q. Who is Sal Lima?

01:59PM 21 A. Sal Lima is a friend, but not from North Buffalo. He
01:59PM 22 grew up on the West Side, but he's a friend.

01:59PM 23 Q. Is he a friend of yours?

01:59PM 24 A. He's a friend of mine.

01:59PM 25 Q. Does he know the defendant?

01:59PM 1 A. I don't believe so.

01:59PM 2 Q. Who is Dave Hersey?

01:59PM 3 A. He's a friend of ours, he knows myself and the defendant.

01:59PM 4 Q. How old were you when you met Dave Hersey?

02:00PM 5 A. Late 20s.

02:00PM 6 Q. How old was the defendant?

02:00PM 7 A. Same age.

02:00PM 8 Q. Who is Sal Volpe?

02:00PM 9 A. Sal Volpe is -- he's deceased, he's from North Buffalo.

02:00PM 10 Q. Was he a friend of yours?

02:00PM 11 A. Yes.

02:00PM 12 Q. Was he a friend of the defendant's?

02:00PM 13 A. I believe he knows him, yes.

02:00PM 14 Q. Who is Wayne Anderson?

02:00PM 15 A. A friend from the neighborhood.

02:00PM 16 Q. How long have you known Wayne Anderson?

02:00PM 17 A. Since our teen years.

02:00PM 18 Q. Does the defendant know Wayne Anderson?

02:00PM 19 A. Yes.

02:00PM 20 Q. How long has the defendant known Wayne Anderson?

02:00PM 21 A. Same time.

02:00PM 22 Q. So since teenage years?

02:00PM 23 A. Teenage, to be more specific, yes, sorry.

02:00PM 24 Q. Do you know Mark Suppa?

02:00PM 25 A. Yes.

02:00PM 1 Q. Who is that?

02:00PM 2 A. Lifelong friend from the neighborhood again.

02:00PM 3 Q. Does the defendant know Mark Suppa?

02:01PM 4 A. Yes.

02:01PM 5 Q. Do you know John Suppa?

02:01PM 6 A. Yes.

02:01PM 7 Q. Who's that?

02:01PM 8 A. It's Mark's older brother, again, a friend from the

02:01PM 9 neighborhood.

02:01PM 10 Q. How long have you known him?

02:01PM 11 A. Since I was a kid. 13, 14. He was a little older than

02:01PM 12 me.

02:01PM 13 Q. Has the defendant known him approximately the same amount

02:01PM 14 of time?

02:01PM 15 A. Yes.

02:01PM 16 Q. Who is Matt Suppa?

02:01PM 17 A. John's brother. John and Mark's brother.

02:01PM 18 Q. And who is he?

02:01PM 19 A. Again, a friend from the neighborhood. We all knew each

02:01PM 20 other.

02:01PM 21 Q. Is that someone the defendant also knows?

02:01PM 22 A. Yeah.

02:01PM 23 Q. Does Masecchia know all of those same people?

02:01PM 24 A. Yes.

02:01PM 25 Q. Is he friends with all those same people I mentioned?

02:01PM

1 A. Yes.

02:01PM

2 Q. Who is Steve Brucato?

02:01PM

3 A. Steve is a friend from the neighborhood.

02:01PM

4 Q. How long have you known him?

02:01PM

5 A. Since teenage years.

02:01PM

6 Q. Does the defendant know him?

02:01PM

7 A. Yes.

02:01PM

8 Q. Did he later bar tend at a bar called Gabels?

02:01PM

9 A. Yes.

02:01PM

10 Q. Now, with the exception of Brucato -- Tomasello, Lima,

02:02PM

11 Hersey, Volpe, and Anderson, the Suppas, and Masecchia, were

02:02PM

12 those people that you were later involved in, in some aspects

02:02PM

13 of a marijuana distribution regarding outdoor marijuana

02:02PM

14 grows?

02:02PM

15 A. Yes.

02:02PM

16 Q. Okay. That activity occurred over a period of years?

02:02PM

17 A. Yes.

02:02PM

18 Q. And the defendant knew all those same people?

02:02PM

19 A. Yes.

02:02PM

20 Q. And were all those same people at various points in time

02:02PM

21 over that continue -- that 11-year continuum, working on

02:02PM

22 those grow operations?

02:02PM

23 A. Yes.

02:02PM

24 Q. Did you knowingly Bart Mazzara from the neighborhood?

02:02PM

25 A. Yes.

02:02PM 1 Q. Did you know Marty Mazzara from the neighborhood?

02:02PM 2 A. Yes.

02:02PM 3 Q. Did the defendant?

02:02PM 4 A. Yes.

02:02PM 5 Q. Is Mike Masecchia related to those individuals?

02:02PM 6 A. Bart Mazzara was his brother-in-law, and he's married to

02:02PM 7 Marty Mazzara's cousin.

02:02PM 8 Q. As far as you understood it by reputation, were either of

02:03PM 9 those two individuals, the Mazzaras, reputed to be connected

02:03PM 10 to IOC, Italian Organized Crime?

02:03PM 11 A. Bart's father was known to be IOC.

02:03PM 12 Q. What was Bart's father's name?

02:03PM 13 A. He's deceased. Bart Mazzara, Sr.

02:03PM 14 Q. Senior?

02:03PM 15 A. Yes.

02:03PM 16 Q. So the deceased Bart Mazzara was Masecchia's

02:03PM 17 father-in-law?

02:03PM 18 A. Yes.

02:03PM 19 Q. Masecchia married who?

02:03PM 20 A. His daughter, Krista.

02:03PM 21 Q. Now, at some point in your life growing up, did you begin

02:03PM 22 to experiment with drugs?

02:03PM 23 A. Yes.

02:03PM 24 Q. What was the first drug you experimented with?

02:03PM 25 A. Marijuana.

02:03PM 1 Q. When did you start using marijuana?

02:03PM 2 A. Teen years.

02:03PM 3 Q. Were you in high school?

02:03PM 4 A. Yes.

02:03PM 5 Q. Which high school were you in, Joe's, Canisius, Cardinal

02:03PM 6 O'Hara?

02:03PM 7 A. Saint Joe's.

02:03PM 8 Q. Saint Joe's, when you started your freshman year?

02:04PM 9 A. Freshman year.

02:04PM 10 Q. In high school, did you smoke with friends?

02:04PM 11 A. Yes.

02:04PM 12 Q. Who were some of the friends you smoked marijuana with?

02:04PM 13 A. The defendant, Mike Masecchia. Who else. Quite a few.

02:04PM 14 I mean, different individuals from North Buffalo.

02:04PM 15 Q. Did you try any other drugs in high school, or was it

02:04PM 16 just marijuana?

02:04PM 17 A. Marijuana.

02:04PM 18 Q. After high school, did you experiment with other drugs?

02:04PM 19 A. Yes.

02:04PM 20 Q. What other drugs did you experiment with?

02:04PM 21 A. Cocaine.

02:04PM 22 Q. When did you first try cocaine?

02:04PM 23 A. I believe when I got back from being in the Air Force,

02:04PM 24 19. 18, 19, that time frame. I was a teenager.

02:05PM 25 Q. When you did that, were you working in the bar scene?

02:05PM 1 A. Not yet. I was not old enough. So I was working odd
02:05PM 2 jobs, I mentioned I had had a -- I bought a Jeep and I was
02:05PM 3 doing snowplowing.

02:05PM 4 Q. So you were back in Buffalo going to school and working?

02:05PM 5 A. Yes.

02:05PM 6 Q. As time went on, did there come a time when you consumed
02:05PM 7 cocaine in your late teenage or -- or -- or in your 20s with
02:05PM 8 the defendant?

02:05PM 9 A. Yes.

02:05PM 10 Q. As you guys got into that age range, describe the
02:05PM 11 circumstances where you would use cocaine with the defendant.

02:05PM 12 A. Being out, if there was a party, social setting, if it
02:05PM 13 was around.

02:05PM 14 Q. Now was that before you started working in law
02:06PM 15 enforcement?

02:06PM 16 A. Yes.

02:06PM 17 Q. Prior to the defendant -- withdrawn.

02:06PM 18 As far as you understand it, what was first law
02:06PM 19 enforcement agency the defendant worked for?

02:06PM 20 A. Erie County Sheriff's Department.

02:06PM 21 Q. Do you remember approximately when he started working
02:06PM 22 there?

02:06PM 23 A. Mid '90s, '95. Around '94.

02:06PM 24 Q. Was it around the time that you're coming in Arizona --

02:06PM 25 A. Yes.

02:06PM 1 Q. -- or, excuse me, withdrawn, Las Vegas?

02:06PM 2 A. I was still in Buffalo.

02:06PM 3 Q. Okay.

02:06PM 4 A. But I was getting ready to leave.

02:06PM 5 Q. Okay. Prior to the defendant joining law enforcement,

02:06PM 6 how many times did you and he use cocaine together?

02:06PM 7 A. A handful. Five, six, seven times.

02:06PM 8 Q. Prior to defendant joining law enforcement, how many

02:06PM 9 times did you and he use marijuana together?

02:07PM 10 A. A little bit more, ten, 15 times.

02:07PM 11 Q. Now did you spend time at the defendant's house growing

02:07PM 12 up, at his house on Lovering?

02:07PM 13 A. Yes.

02:07PM 14 Q. How frequently were you there growing up?

02:07PM 15 A. Periodically, you know, during the week, weekends.

02:07PM 16 Q. Did you meet members of his family?

02:07PM 17 A. Yes.

02:07PM 18 Q. Who are his mom and dad?

02:07PM 19 A. Fred and Maria Bongiovanni.

02:07PM 20 Q. Growing up, was there ever a time where you and the

02:07PM 21 defendant would have conversations about Italian Organized

02:07PM 22 Crime in the neighborhood?

02:07PM 23 A. Yes.

02:07PM 24 Q. Describe for the jury, what context would that topic come

02:08PM 25 up?

02:08PM 1 A. If we were out, and we saw somebody, meaning someone that
02:08PM 2 would be a high-profile figure in Italian Organized Crime,
02:08PM 3 we'd mention it. And we'd usually, if we knew him, we'd say
02:08PM 4 hello. That type thing.

02:08PM 5 Q. Why would you say hello?

02:08PM 6 A. If -- just out of respect.

02:08PM 7 Q. Do you remember that scenario happening with certain
02:08PM 8 specific individuals around town at various points?

02:08PM 9 A. Yes.

02:08PM 10 Q. Can you name some people who you and the defendant made a
02:08PM 11 point to say hello to when you saw them out, out of respect?

02:08PM 12 A. Tom Machelli.

02:08PM 13 Q. Did he have a nickname?

02:08PM 14 A. Tom Chooch. Joe Rosato.

02:08PM 15 Johnny Catanzaro, that's, you know, Butchie Bifocals. If
02:09PM 16 we saw these individuals, Johnny Catanzaro, we would say
02:09PM 17 hello.

02:09PM 18 Q. As you understood it at the time that you and the
02:09PM 19 defendant were saying hello to those people out of respect,
02:09PM 20 what was your understanding of their status as it relates to
02:09PM 21 Italian Organized Crime?

02:09PM 22 A. They were made members.

02:09PM 23 Q. Is that a topic of conversation that would come up from
02:09PM 24 time to time between you and the defendant?

02:09PM 25 A. If we were out and saw, yes.

Q. Did you respect people growing up over time, did you respect people that you perceived to be connected to Organized Crime in that way?

A. I did.

Q. Based upon your interactions and conversations with the defendant, did you perceive him to respect people connected to Italian Organized Crime?

A. He did, yes.

Q. When that topic would be discussed between the two of you, how would the defendant talk about those types of people -- withdrawn.

What would his demeanor be when he would talk about those types of people?

A. Casual conversation. If their names came up, like we knew them, we knew who they were. Depending on the situation if we said hello, that type of thing, if there was a party, whatever it was.

Q. Based upon your friendship with the defendant and your conversations with him and your knowledge, did he have any personal relationships with any individuals that had a connection to Italian Organized Crime, or IOC for short?

MR. SINGER: Object to form of the question.

THE COURT: Yeah. Sustained.

BY MR. TRIPI:

Q. I understand. Do you know an individual named Dana

02:11PM 1 Panepinto?

02:11PM 2 A. Yes.

02:11PM 3 Q. Who is Dana Panepinto?

02:11PM 4 A. Mr. Bongiovanni's girlfriend from when he was younger.

02:11PM 5 Q. And who was Dana Panepinto's father?

02:11PM 6 A. Donnie Panepinto.

02:11PM 7 Q. And what was his nickname?

02:11PM 8 A. Turtle.

02:11PM 9 Q. As you understood, Donnie Panepinto also known as Turtle,

02:11PM 10 what was your belief as to his connection to Italian

02:11PM 11 Organized Crime?

02:11PM 12 A. He was a made member of Italian Organized Crime.

02:11PM 13 Q. And how long did the defendant -- withdrawn.

02:11PM 14 What was the defendant's relationship with Turtle's

02:11PM 15 daughter, Dana?

02:11PM 16 A. It was his girlfriend.

02:11PM 17 Q. For how long?

02:11PM 18 A. Four or five years.

02:11PM 19 Q. During what period of life?

02:11PM 20 A. During teen years, early 20s.

02:11PM 21 Q. Can you give an estimate age range?

02:12PM 22 A. 18 to 22, somewhere in that time frame.

02:12PM 23 Q. So we're talking end of high school into college?

02:12PM 24 A. Yep.

02:12PM 25 Q. Did the defendant attend college?

02:12PM 1 A. Yes.

02:12PM 2 Q. What, if anything, did the defendant ever tell you about
02:12PM 3 his father in regard to his father's friends as it relates to
02:12PM 4 IOC?

02:12PM 5 A. His father had friends that were connected.

02:12PM 6 Q. Did the defendant name his father's friends that were
02:12PM 7 connected?

02:12PM 8 A. At times.

02:12PM 9 Q. Who did he name to you?

02:12PM 10 A. Well, he played cards on Hertel at the club, there was a
02:12PM 11 lot of associates there. Tommy Chooch. Joe Rosato. He had
02:12PM 12 an uncle in Las Vegas he referred to as his Uncle Cheech.

02:13PM 13 Q. What did he say about Uncle Cheech?

02:13PM 14 A. He lived in Las Vegas, and was an uncle from a friend of
02:13PM 15 the family's, and believe he was connected.

02:13PM 16 Q. Who was Gabby Cino?

02:13PM 17 A. Gabby Cino was also one of the individuals at who would
02:13PM 18 attend the club on Hertel and play cards with his father.

02:13PM 19 Q. When you say "his father," who are you talking about?

02:13PM 20 A. Fred Bongiovanni.

02:13PM 21 Q. The defendant's father?

02:13PM 22 A. The defendant's father.

02:13PM 23 Q. And when you say "the club on Hertel" what are you
02:13PM 24 referencing?

02:13PM 25 A. There was a club on Hertel Avenue, Italian American Club,

02:13PM 1 where older men would play cards.

02:13PM 2 Q. And by reputation -- withdrawn.

02:13PM 3 What was the address of that club?

02:13PM 4 A. I don't recall the address.

02:13PM 5 Q. Where was it located on Hertel?

02:13PM 6 A. Between Commonwealth and Lovering.

02:14PM 7 Q. By reputation, what -- what was that club to you?

02:14PM 8 A. It was affiliated with -- it was a place where Organized

02:14PM 9 Crime figures would be playing cards.

02:14PM 10 Q. Have you ever observed the defendant's father there?

02:14PM 11 A. I've driven by and seen his car there, I've never been in

02:14PM 12 there when his father was there.

02:14PM 13 Q. Have you been in there?

02:14PM 14 A. I have.

02:14PM 15 Q. How many times?

02:14PM 16 A. A few.

02:14PM 17 Q. What age were you when you went in there?

02:14PM 18 A. 20s, 30s, late 30s. I had to go in there to see Tom

02:14PM 19 Machelli who lived down the street from me.

02:14PM 20 Q. What did you have to see him about?

02:15PM 21 A. Just something regarding the neighborhood. It was the

02:15PM 22 development we lived in, he lived with his wife or his

02:15PM 23 girlfriend at the time. It was just an issue regarding the

02:15PM 24 neighborhood, it was nothing serious. We lived in -- it was

02:15PM 25 called Rebecca Park, the association.

02:15PM 1 Q. Do you know whether or not the defendant has been into
02:15PM 2 that location called the club on Hertel?

02:15PM 3 A. I don't know if he's been.

02:15PM 4 Q. What did the defendant say about his father's association
02:15PM 5 to the club on Hertel?

02:15PM 6 A. He played cards there regularly, he was a card player.

02:15PM 7 Q. You referenced an Uncle Cheech that the defendant talked
02:15PM 8 about earlier. Where did the defendant -- where did the
02:15PM 9 defendant tell you Uncle Cheech was located?

02:16PM 10 A. Las Vegas.

02:16PM 11 Q. What, if anything, else did the defendant say about Uncle
02:16PM 12 Cheech in Las Vegas to you?

02:16PM 13 A. Really not much, just that he lived out there, and he was
02:16PM 14 close with his family, and that was really it.

02:16PM 15 Q. What, if anything, did the defendant say that made you
02:16PM 16 conclude Uncle Cheech was connected to Organized Crime?

02:16PM 17 A. He had mentioned it.

02:16PM 18 Q. What did the defendant say in that regard?

02:16PM 19 A. That he was connected, that's why he's out there.

02:16PM 20 Q. What did the word "connected" mean to you when the
02:16PM 21 defendant used it?

02:16PM 22 A. He was a made member of Organized Crime.

02:16PM 23 Q. When the defendant was back from Boston and you were back
02:16PM 24 from Arizona, is that the right time frame?

02:16PM 25 A. Yes. Yes.

02:17PM 1 Q. Did the defendant attend college locally?

02:17PM 2 A. Yes.

02:17PM 3 Q. Where did he go?

02:17PM 4 A. I believe U.B. and then Medaille.

02:17PM 5 Q. Who else that you would later become involved in criminal

02:17PM 6 activity went to U.B.?

02:17PM 7 A. Michael Masecchia.

02:17PM 8 Q. Were they associating with each other that time,

02:17PM 9 Bongiovanni and Masecchia?

02:17PM 10 A. Yes.

02:17PM 11 Q. How do you know that?

02:17PM 12 A. They told me.

02:17PM 13 Q. Who told you?

02:17PM 14 A. Joe. They were driving to school together.

02:17PM 15 Q. To U.B.?

02:17PM 16 A. To U.B.

02:17PM 17 Q. During that time, were you socializing with the defendant

02:17PM 18 regularly?

02:17PM 19 A. Yes.

02:17PM 20 Q. Were you socializing with Masecchia?

02:17PM 21 A. Yes, on occasion, yes.

02:17PM 22 Q. Now you mentioned earlier sort of in your high school

02:18PM 23 years, and before he was in law enforcement, that you used

02:18PM 24 cocaine and marijuana with the defendant on occasion; do you

02:18PM 25 recall that?

02:18PM

1 A. Yes.

02:18PM

2 Q. I want to fast forward a moment to once the defendant is

02:18PM

3 a DEA agent, okay? Okay?

02:18PM

4 A. Okay.

02:18PM

5 Q. During any conversations with you, did the defendant ever

02:18PM

6 express any views towards marijuana?

02:18PM

7 A. That he liked it? Or --

02:18PM

8 Q. What did he say to you about marijuana as a DEA agent?

02:18PM

9 A. He was waiting for him to retire so he could start

02:18PM

10 smoking it.

02:18PM

11 Q. What, if any, opinions did he express to you about

02:18PM

12 enforcing marijuana laws?

02:18PM

13 A. He wasn't very strong on them, thought they should be

02:19PM

14 legalized.

02:19PM

15 Q. Fast forwarding a bit, but when the defendant was a DEA

02:19PM

16 agent, were there times when you used cocaine with him?

02:19PM

17 A. Yes.

02:19PM

18 Q. I'm going to get into the substance of those later on,

02:19PM

19 but did you have any conversations with the defendant about

02:19PM

20 his cocaine use as a DEA agent?

02:19PM

21 A. Yes.

02:19PM

22 Q. What did he say about that?

02:19PM

23 A. Told me how it stayed in his system for 72 hours, to

02:19PM

24 flush it out, either working out and drinking a lot of water,

02:19PM

25 he was concerned about it.

02:19PM 1 Q. Did he ever discuss for you why he would use cocaine
02:19PM 2 versus marijuana as an agent?

02:19PM 3 A. It was easier to flush out, because marijuana stayed in
02:19PM 4 your system a little longer. 30 days as opposed to three.

02:20PM 5 Q. Are those conversations you had with the defendant?

02:20PM 6 A. Yes.

02:20PM 7 Q. Getting back to still the time period before the
02:20PM 8 defendant is in law enforcement, okay, so college years, into
02:20PM 9 the 20s, okay? At times, when you would go out to bars, did
02:20PM 10 you provide the cocaine at times?

02:20PM 11 A. Yes.

02:20PM 12 Q. Were you getting it from somebody?

02:20PM 13 A. Yes.

02:20PM 14 Q. Who were you getting from?

02:20PM 15 A. At that time, Mario Zanghi.

02:20PM 16 Q. Were there ever any occasions when it was the defendant
02:20PM 17 who had it?

02:20PM 18 A. Yes.

02:21PM 19 Q. As between the two of you, who had it more?

02:21PM 20 A. I did.

02:21PM 21 Q. So you indicated earlier that you were in Las Vegas from
02:21PM 22 '97 to '99. And you were there with your wife and your two
02:21PM 23 children, correct?

02:21PM 24 A. Correct.

02:21PM 25 Q. Just remind the jury, what were you doing out there at

02:21PM 1 that time for work?

02:21PM 2 A. I was in the wireless business, cell phone business, like

02:21PM 3 I was here.

02:21PM 4 Q. And I think you said as you were getting ready to go, the

02:21PM 5 defendant was joining the Erie County Sheriff's Office?

02:21PM 6 A. That's correct.

02:21PM 7 Q. When he worked for the Erie County Sheriff's Office, what

02:22PM 8 was the defendant's job?

02:22PM 9 A. He was a deputy in the holding center.

02:22PM 10 Q. So he was he guarding inmates just like you did?

02:22PM 11 A. Exactly, same position.

02:22PM 12 Q. As the defendant was joining the Erie County Sheriff's

02:22PM 13 Office, were you aware of any life changes that he had, major

02:22PM 14 life events?

02:22PM 15 A. He was married to his first wife.

02:22PM 16 Q. What was her name?

02:22PM 17 A. JoAnn.

02:22PM 18 Q. Shortly after that, did he have a child?

02:22PM 19 A. He did.

02:22PM 20 Q. What was his child's name?

02:22PM 21 A. He had a daughter, Chelsea.

02:22PM 22 Q. When you were in Las Vegas, did you stay in touch with

02:22PM 23 the defendant?

02:23PM 24 A. Yes.

02:23PM 25 Q. From '97 to '99?

02:23PM

1 A. Yes.

02:23PM

2 Q. How did you keep in touch?

02:23PM

3 A. Through phone. I mean, there really -- wireless, well,

02:23PM

4 cell phones were different at that time.

02:23PM

5 Q. Did there come a time where you learned the defendant had

02:23PM

6 applied to the DEA?

02:23PM

7 A. Yes.

02:23PM

8 Q. How did you learn about that?

02:23PM

9 A. He had told me.

02:23PM

10 Q. Was that in person or over the phone?

02:23PM

11 A. Over the phone.

02:23PM

12 Q. What, if anything, did he tell you about the process of

02:23PM

13 joining the DEA?

02:23PM

14 A. A back -- severe background -- a very deep background

02:23PM

15 check, polygraph, and then he'd have to go away to training

02:23PM

16 to Quantico, Virginia.

02:23PM

17 Q. Did he ever express any concerns to you about any of his

02:23PM

18 past connections?

02:23PM

19 A. No.

02:23PM

20 Q. Were you one of the references for his DEA application?

02:24PM

21 A. No.

02:24PM

22 Q. Do you know who was?

02:24PM

23 A. I do not.

02:24PM

24 Q. When he joined the DEA, do you know where his first duty

02:24PM

25 station was?

02:24PM 1 A. Florida.

02:24PM 2 Q. Do you know where in Florida?

02:24PM 3 A. Miami? Orlando? I don't recall.

02:24PM 4 Q. Did you ever visit him there?

02:24PM 5 A. No.

02:24PM 6 Q. Who did he live there with?

02:24PM 7 A. His wife.

02:24PM 8 Q. Did you keep in touch?

02:24PM 9 A. Sporadically.

02:24PM 10 Q. When you did talk, was it over the phone?

02:24PM 11 A. Yeah, it was not that much.

02:24PM 12 Q. Did there come a point in time where you learned he was

02:24PM 13 going to be leaving Florida?

02:24PM 14 A. Yes.

02:24PM 15 Q. What, if anything, did he say to you about that?

02:24PM 16 A. He was going to be transferring back to Buffalo. His

02:25PM 17 wife was going through, at the time, her sister was sick or

02:25PM 18 passed away, I don't recall what had happened. She had moved

02:25PM 19 back first, and he was going to stay behind and sell the

02:25PM 20 house and move back. Try and take a transfer.

02:25PM 21 Q. What was that last part you said?

02:25PM 22 A. Take a transfer. Transfer with the DEA.

02:25PM 23 Q. Back to Buffalo?

02:25PM 24 A. Back to Buffalo.

02:25PM 25 Q. So you got back to Buffalo around '99. Did he return to

02:25PM 1 Buffalo a few years after that?

02:25PM 2 A. Within that time frame, yeah.

02:25PM 3 Q. When the defendant arrived back in Buffalo, shortly after

02:25PM 4 that, was he separated from his wife, JoAnn?

02:25PM 5 A. Yeah, shortly after, yes.

02:25PM 6 Q. Do you know where he was living?

02:25PM 7 A. I believe he moved into Lovering.

02:26PM 8 Q. What do you mean by Lovering?

02:26PM 9 A. I'm sorry, his residence, his family's home on Lovering.

02:26PM 10 Lovering Avenue in North Buffalo.

02:26PM 11 Q. And what's that address?

02:26PM 12 A. 221.

02:26PM 13 Q. Lovering?

02:26PM 14 A. Yes.

02:26PM 15 Q. Is that a double?

02:26PM 16 A. It's a double.

02:26PM 17 Q. And I guess we should define that. What's a double?

02:26PM 18 A. Two-story house, two-family house. You could have a

02:26PM 19 family live downstairs and upstairs.

02:26PM 20 Q. So basically one house with two apartments?

02:26PM 21 A. One house with two apartments, yes.

02:26PM 22 Q. And where did the defendant's parents live?

02:26PM 23 A. I believe downstairs.

02:26PM 24 Q. And where did the defendant live?

02:26PM 25 A. Upstairs.

02:26PM 1 Q. Do you know whether or not he had to pay rent to his
02:26PM 2 parents?

02:26PM 3 A. I don't recall. I think he did, I'm not quite sure.

02:26PM 4 Q. Once the defendant was back in Buffalo, and you were in
02:26PM 5 Buffalo -- withdrawn.

02:26PM 6 What were you doing at that time career wise?

02:26PM 7 A. In -- I was in sales in the wireless business. I was
02:27PM 8 working for NEXTEL and tending bar at Harry's Harbor Place.

02:27PM 9 Q. And where was Harry's Harbor Place?

02:27PM 10 A. It was on the waterfront.

02:27PM 11 Q. And you were a bartender there?

02:27PM 12 A. On the weekends.

02:27PM 13 Q. Weekends, being Friday-Saturday, or Saturday-Sunday?

02:27PM 14 A. Friday-Saturday, and maybe pick -- I was working full
02:27PM 15 time during the day, so the weekends were a little bit
02:27PM 16 easier.

02:27PM 17 Q. When the defendant got back in town, did you -- did you
02:27PM 18 and him start reconnecting more?

02:27PM 19 A. Yes.

02:27PM 20 Q. Can you describe how that transpired for the jury, just
02:27PM 21 explain it to them.

02:27PM 22 A. He started coming in to Harry's Harbor when I was there,
02:27PM 23 and we reconnected again and reestablished our relationship,
02:27PM 24 so to speak.

02:27PM 25 Q. How frequently was he coming in to Harry's Harbor Place?

02:28PM 1 A. You know, he would frequent it. Not every weekend, but

02:28PM 2 he would come in once in a while. Whenever he had time.

02:28PM 3 Q. Other than him visiting you at the bar, what else did you

02:28PM 4 start doing together, if anything?

02:28PM 5 A. We -- we did cocaine together.

02:28PM 6 Q. Okay. Was that at the bar?

02:28PM 7 A. No, but different occasions when we'd get together at

02:28PM 8 that time.

02:28PM 9 Q. Okay. Did you do anything else socially? Were there

02:28PM 10 other places where you would see the defendant during the

02:28PM 11 week?

02:28PM 12 A. No, not at that -- not during the week. I was busy, he

02:28PM 13 was busy.

02:28PM 14 Q. Were you someone who used to like to work out?

02:28PM 15 A. Yes.

02:28PM 16 Q. Did you join a gym?

02:28PM 17 A. We did, we joined the gym.

02:28PM 18 Q. What gym did you join?

02:28PM 19 A. The Fitness Factory.

02:28PM 20 Q. And where did the defendant work out?

02:28PM 21 A. He worked out there, as well.

02:28PM 22 Q. And were there times when you would work out together

02:29PM 23 during the day?

02:29PM 24 A. Yes, if our schedule permitted, yes.

02:29PM 25 Q. And socially, when you were not working, would you go to

02:29PM 1 bars together?

02:29PM 2 A. Yes. We'd get together, have drinks.

02:29PM 3 Q. Now by 2001, what was the status of your marriage?

02:29PM 4 A. I was going -- I just got through a divorce. I was

02:29PM 5 divorced.

02:29PM 6 Q. Was your divorce finalized by then?

02:29PM 7 A. Yes.

02:29PM 8 Q. What types of things did you have to pay as a result of

02:29PM 9 your divorce?

02:29PM 10 A. Child support. I split daycare costs with my ex-wife.

02:29PM 11 On top of providing, whenever I had my children, I was always

02:29PM 12 doing things with them. If we went out to eat, whatever,

02:29PM 13 expenses for that.

02:29PM 14 Q. Did you have to pay maintenance to your ex-wife?

02:29PM 15 A. I did not. Just child support and split daycare costs,

02:29PM 16 after-school costs.

02:29PM 17 Q. What's your understanding of why you did not have to pay

02:29PM 18 maintenance?

02:29PM 19 A. My ex-wife was working full time.

02:30PM 20 Q. Did she make more money than you?

02:30PM 21 A. No, it's just an agreement that we worked on. She didn't

02:30PM 22 require maintenance.

02:30PM 23 Q. Now you, at that time, was your divorced finalized?

02:30PM 24 A. 2001, it was, yes.

02:30PM 25 Q. Now, what was the defendant's marital status at that

02:30PM 1 point?

02:30PM 2 A. I believe he was going through a divorce, too.

02:30PM 3 Q. Did you speak to one another about that?

02:30PM 4 A. Yes.

02:30PM 5 Q. Was that sort of a shared experience you were going
02:30PM 6 through around the same time?

02:30PM 7 A. Yes.

02:30PM 8 Q. What did the defendant tell you about his divorce
02:30PM 9 situation?

02:30PM 10 A. It was expensive. He'd be making maintenance to his
02:30PM 11 wife, his ex-wife, as well as child support. So, additional
02:31PM 12 expenses, as well as emotionally, you know, being separated
02:31PM 13 from your child and going through a whole divorce.

02:31PM 14 Q. When he would speak about the expenses related to his
02:31PM 15 divorce and that whole situation, what was his demeanor?

02:31PM 16 A. We would just talk about it socially. I mean, he was
02:31PM 17 upset, obviously. No one wants to go through that.

02:31PM 18 Q. What was his demeanor?

02:31PM 19 A. Upset.

02:31PM 20 Q. Were you upset when you went through your divorce?

02:31PM 21 A. Very.

02:31PM 22 Q. Was that stressful for you?

02:31PM 23 A. It was very stressful.

02:31PM 24 Q. Based upon your discussions and your observations of the
02:31PM 25 defendant, what was your opinion regarding whether or not he

02:31PM 1 was stressed?

02:31PM 2 A. He was stressed. I mean, the new financial obligation of
02:31PM 3 paying maintenance and child support, the financial stress
02:31PM 4 was getting to him. As well as being separated from his
02:31PM 5 child, like I mentioned.

02:31PM 6 Q. During that time, when you're -- you're both single at
02:32PM 7 that point?

02:32PM 8 A. Yes.

02:32PM 9 Q. Did you guys go out together?

02:32PM 10 A. Yeah. On occasion. I mean, he was busy, I was busy, but
02:32PM 11 we'd get together.

02:32PM 12 Q. So, when you would go out, did there come a point in time
02:32PM 13 where you disclosed to the defendant that you were using
02:32PM 14 cocaine?

02:32PM 15 A. Yes.

02:32PM 16 Q. Describe for the jury the first time that you had that
02:32PM 17 discussion with the defendant.

02:32PM 18 A. We were out, and I had had cocaine on me, and asked him
02:32PM 19 if he wanted to do some. And we did it together.

02:32PM 20 Q. Is that something you had done earlier in life together?

02:32PM 21 A. Yes.

02:32PM 22 Q. Where were you on that occasion, if you recall?

02:32PM 23 A. I don't recall.

02:32PM 24 Q. Did you have certain bars that you liked to go to with
02:33PM 25 the defendant?

02:33PM 1 A. Downtown, there was a variety of them. Chippewa, SoHo,
02:33PM 2 Mother's. Sometimes on Hertel, M.T. Pocket's, Gables,
02:33PM 3 neighborhood bars.

02:33PM 4 Q. Now, did that happen right away, you reconnect and you
02:33PM 5 start using cocaine? Or did that take a little bit of time?

02:33PM 6 A. No, it took a little time.

02:33PM 7 Q. Describe that process of getting to that point for the
02:33PM 8 jury.

02:33PM 9 A. Just going out more. The stress of it all. Obviously,
02:33PM 10 alcohol, when you're drinking alcohol, that plays a factor in
02:33PM 11 it. So, it evolved over time.

02:33PM 12 Q. I mean, when you -- when you and the defendant were going
02:33PM 13 out, were you looking for girls?

02:33PM 14 A. Yeah. We were, yes. We were socializing, talking to
02:34PM 15 people. Yes.

02:34PM 16 Q. Now, when the defendant was going through his divorce,
02:34PM 17 and you discussed the maintenance and the child support,
02:34PM 18 what, if any, other financial obligation did he discuss that
02:34PM 19 he had?

02:34PM 20 **MR. SINGER:** Objection. Asked and answered, Judge,
02:34PM 21 we went through this a couple times now.

02:34PM 22 **MR. TRIPI:** I don't believe so, Your Honor.

02:34PM 23 **THE COURT:** I'll give you a little more latitude,
02:34PM 24 Mr. Tripi, but I want you to move along.

02:34PM 25 **MR. TRIPI:** I understand.

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1 **THE COURT:** Overruled, but go ahead.

2 **BY MR. TRIPI:**

3 Q. During this time period, what else did you know him to be

4 paying for?

5 A. His living expenses. Obviously, he was paying his

6 maintenance, his child support. He was good with that. And

7 then his expenses.

8 Q. What type of vehicle did he have?

9 A. Cadillac Escalade.

10 Q. Was that, in your view, an expensive vehicle?

11 A. Yes.

12 Q. Do you know whether or not his parents were retired?

13 A. I don't know if they were at that point.

14 Q. What, if anything, did he say about whether his wife

15 worked? You indicated your wife worked. What did he say

16 about his wife, or ex-wife?

17 A. His ex-wife did not work. She was a stay-at-home mom.

18 And I believe she pursued her master's degree, she has her

19 master's degree, but I don't believe she ever worked.

20 Q. What, if anything, did he say about her not working?

21 A. He was carrying the whole burden.

22 **MR. SINGER:** Asked and answered.

23 **THE COURT:** Yeah, sustained.

24 **BY MR. TRIPI:**

25 Q. Was there a topic that would come up as it relates to his

02:35PM 1 wife's employment repeatedly?

02:35PM 2 A. Yes.

02:35PM 3 **MR. SINGER:** Objection.

02:35PM 4 **MR. TRIPI:** How often?

02:35PM 5 **THE COURT:** What's the basis of the objection.

02:35PM 6 **MR. SINGER:** Asked and answered.

02:36PM 7 **THE COURT:** No, overruled.

02:36PM 8 **BY MR. TRIPI:**

02:36PM 9 Q. How often?

02:36PM 10 A. It would come up quite a bit.

02:36PM 11 Q. Describe that for the jury.

02:36PM 12 A. She was not providing an income, so he was wishing that
02:36PM 13 she would get a job. She had a master's degree, and he was
02:36PM 14 covering all the expenses at this time. I believe they had
02:36PM 15 their child at this time, so it was becoming a burden.

02:36PM 16 Q. As time went on, did he tell you about other things that
02:36PM 17 he was paying for that his ex-wife wasn't?

02:36PM 18 A. Yes. He was, like I mentioned --

02:36PM 19 Q. Like what?

02:36PM 20 A. Well, living expenses, I -- I -- I don't recall, sorry.

02:36PM 21 Q. Do you know -- do you know where his daughter went to
02:36PM 22 school?

02:36PM 23 A. Okay. He was paying the tuition for his daughter's
02:36PM 24 school in Williamsville. It was a Catholic school.

02:36PM 25 Q. Do you know of any other expenses relating to his

02:36PM 1 daughter that he would talk about?

02:37PM 2 A. Yes, he would pay additional expenses for his daughter,
02:37PM 3 whatever she needed. Anything school related. That type
02:37PM 4 thing.

02:37PM 5 Q. By 2004, did the defendant start dating someone new?

02:37PM 6 A. Yes.

02:37PM 7 Q. And who was that?

02:37PM 8 A. I believe Melissa -- I don't know her last name.

02:37PM 9 Q. Do you know what she did for a living?

02:37PM 10 A. I believe she was a -- worked in a salon when he met her,
02:37PM 11 but she got her nursing degree and ended up becoming a nurse.

02:37PM 12 Q. So she went from working at a salon, to in school, then a
02:37PM 13 nurse?

02:37PM 14 A. Yes, correct.

02:37PM 15 Q. Was there an age difference between the two of them?

02:37PM 16 A. Yes.

02:37PM 17 Q. What was the approximate age difference?

02:38PM 18 **MR. SINGER:** Objection, relevance.

02:38PM 19 **THE COURT:** Sustained.

02:38PM 20 **BY MR. TRIPI:**

02:38PM 21 Q. What types of activities did they engage in socially?

02:38PM 22 A. They went out a lot. Dinners. Lot of bars. Travel.

02:38PM 23 Q. When the defendant was dating Melissa, was he still under
02:38PM 24 obligations related to his ex-wife?

02:38PM 25 A. He was, yes.

02:38PM 1 Q. When he went out with Melissa, what, if anything, did he
02:38PM 2 tell you about his spending habits on her?

02:38PM 3 A. They were excessive. He was always buying dinners,
02:38PM 4 drinks.

02:38PM 5 **MR. SINGER:** Objection, Judge, it's nonresponsive to
02:38PM 6 the question.

02:38PM 7 **MR. TRIPI:** Yes, it is.

02:38PM 8 **MR. SINGER:** It's response --

02:38PM 9 **THE COURT:** He -- no, I think it is responsive
02:38PM 10 Mr. Singer, overruled.

02:38PM 11 **MR. SINGER:** But --

02:39PM 12 **THE COURT:** Do you have something more you want to
02:39PM 13 say?

02:39PM 14 **MR. SINGER:** Judge, the question was what did
02:39PM 15 Mr. Bongiovanni tell you about his spending habits regarding
02:39PM 16 Melissa?

02:39PM 17 **THE COURT:** Right.

02:39PM 18 **MR. SINGER:** And the witness began to answer offering
02:39PM 19 his opinion about what it was. So, again, it's nonresponsive
02:39PM 20 to the question.

02:39PM 21 **THE COURT:** I don't -- I disagree with that, so
02:39PM 22 overruled.

02:39PM 23 **BY MR. TRIPI:**

02:39PM 24 Q. Do you know the approximate years he dated Melissa?

02:39PM 25 A. 2004 to 2009.

02:39PM 1 Q. About five years?

02:39PM 2 A. About five years. I don't know the exact dates.

02:39PM 3 Q. What was their living situation, if you know?

02:39PM 4 A. They didn't live together. He was living at Lovering and

02:39PM 5 she had an apartment.

02:40PM 6 Q. I want to switch gears a little bit, okay?

02:40PM 7 A. Sure.

02:40PM 8 Q. I asked you earlier about an individual named Peter

02:40PM 9 Gerace, do you know him?

02:40PM 10 A. I do.

02:40PM 11 Q. Who is Peter Gerace?

02:40PM 12 A. Peter Gerace, well, he was the owner of Pharaoh's

02:40PM 13 nightclub. He knows both I and the defendant. He was a

02:40PM 14 lifelong -- he was a friend from the -- friend from our

02:40PM 15 adolescent years.

02:40PM 16 Q. What's the defendant's -- what's your understanding of

02:40PM 17 the defendant's relationship with Mr. Gerace in terms of how

02:40PM 18 close they are?

02:40PM 19 A. They were good friends. They hung out.

02:40PM 20 Q. Now, you indicated Gerace owns a bar?

02:40PM 21 A. He does now, yes.

02:40PM 22 Q. What bar is that?

02:40PM 23 A. Pharaoh's on -- near the airport.

02:41PM 24 Q. And by family reputation, who is Peter Gerace related to?

02:41PM 25 A. Joe Todaro was his grandfather.

02:41PM 1 Q. You're talking about Joe Todaro Sr.?

02:41PM 2 A. Yeah, Joe Todaro Sr.

02:41PM 3 Q. And by your understanding of relationship, what was his
02:41PM 4 relationship to Italian Organized Crime?

02:41PM 5 A. By reputation, he was the boss.

02:41PM 6 Q. Did you and Bongiovanni ever speak about him?

02:41PM 7 A. Yes.

02:41PM 8 Q. What did the defendant say about Todaro Sr.?

02:41PM 9 A. He knew him. He knew him. Was nice man. Again, if we
02:41PM 10 saw him out, we'd say hello to him, that type of thing.

02:41PM 11 Q. Who is Peter Gerace's younger brother?

02:42PM 12 A. He had two, Anthony and David.

02:42PM 13 Q. Now I'd like to direct your attention to the defendant's
02:42PM 14 relationship with Peter Gerace as it relates to Pharaoh's
02:42PM 15 nightclub, okay?

02:42PM 16 A. Okay.

02:42PM 17 Q. What, if anything, did the defendant ever tell you about
02:42PM 18 Gerace, Pharaoh's nightclub, and a situation involving
02:42PM 19 U.S. Probation?

02:42PM 20 A. He had told me that Peter had gotten violated, something
02:42PM 21 had happened at the club, and he had stepped in to help him
02:42PM 22 out. He reached out, I believe, to probation. And I believe
02:42PM 23 Peter was looking at going back to, he was released from
02:42PM 24 federal custody, I believe he did four months or whatever it
02:42PM 25 was, six months. He stepped in, and he was wearing an ankle

02:43PM 1 brace.

02:43PM 2 Q. Did the defendant tell you anything more about how he did
02:43PM 3 that or his role in that?

02:43PM 4 A. No.

02:43PM 5 Q. What, if anything, did the defendant ever tell you about
02:43PM 6 going to Pharaoh's?

02:43PM 7 A. He's been there a few times.

02:43PM 8 Q. What, if anything, did the defendant ever tell you about
02:43PM 9 golf outings related to Pharaoh's, Pharaoh's golf outings?

02:43PM 10 A. I believe he golfed in the golf outing there, as well.

02:43PM 11 Q. Have you ever golfed in the Pharaoh's golf outing?

02:43PM 12 A. No.

02:43PM 13 Q. Do you golf?

02:43PM 14 A. I do, but I'm not very good.

02:43PM 15 Q. Have you ever been to Pharaoh's with the defendant?

02:43PM 16 A. Yes.

02:43PM 17 Q. Approximately what time frame was that?

02:43PM 18 A. Oh, God. 2000 -- again -- again, we were out, 2015, '16,
02:43PM 19 right when Peter had just taken it back over.

02:43PM 20 Q. Do you know specifically?

02:44PM 21 A. I don't, I don't recall.

02:44PM 22 Q. I'm going to show you a document and see if I can refresh
02:44PM 23 your recollection, okay?

02:44PM 24 A. Okay.

02:44PM 25 **MR. TRIPI:** Counsel, I'm going to show Exhibit 3540U,

1 page 5, okay? Handing up Government Exhibit 3540U, if you
2 could take a look at page 5, just read that to yourself,
3 Mr. Selva, and when you're done, look up.

4 Did that exhibit refresh your recollection as to
5 approximately when you were there with Mr. Bongiovanni?

6 A. Yes.

7 Q. And when was that?

8 A. Between 2013, '14.

9 Q. And you referenced that it was when Peter -- withdraw
10 that.

11 How many times were you there during that time frame?

12 A. A few.

13 Q. What, if any -- any interaction did you observe between
14 Defendant Bongiovanni and Peter Gerace while you were there
15 with Defendant Bongiovanni?

16 A. We were at the bar. Peter was there. We said hello.

17 And then him and Joe stepped aside, they had a brief
18 conversation in the corner, and then -- two or three minutes,
19 and then came back to the bar.

20 Q. Who stepped aside?

21 A. Joe and Peter.

22 Q. And what do you mean that they stepped aside?

23 A. They walked away from me and had a conversation.

24 Q. Were you part of that conversation?

25 A. I was not.

02:46PM 1 Q. Was it far enough away where you couldn't hear?

02:46PM 2 A. Yes.

02:46PM 3 Q. Do you know what they talked about?

02:46PM 4 A. I don't.

02:46PM 5 Q. Did the defendant walk back over to you and tell you what

02:46PM 6 him and Peter talked about?

02:46PM 7 A. No, he came back and finished his drink, and that was it.

02:46PM 8 Q. How long would you estimate they spoke?

02:46PM 9 A. Three to five minutes.

02:46PM 10 Q. Were you aware of another restaurant that Peter Gerace or

02:47PM 11 his family was associated with?

02:47PM 12 A. Yes.

02:47PM 13 Q. What was that?

02:47PM 14 A. Pietro's.

02:47PM 15 Q. Now, you indicated that you were a bartender?

02:47PM 16 A. Yeah, I filled in a few times there. I worked --

02:47PM 17 Q. Let me ask the question. Does Pietro's have a bar?

02:47PM 18 A. It does.

02:47PM 19 Q. Did you ever work at that bar?

02:47PM 20 A. I did.

02:47PM 21 Q. Who got you to work at that bar?

02:47PM 22 A. I believe I spoke to Peter and Anthony, both, his

02:47PM 23 brother.

02:47PM 24 Q. And how did you meet Peter originally?

02:47PM 25 A. Met him growing up when we were younger.

02:47PM 1 Q. Do you know through who?

02:47PM 2 A. No, just from -- we had a lot of common friends. He was
02:47PM 3 friends with my younger brother.

02:47PM 4 Q. Now you mentioned Anthony Gerace a few times. Is that
02:47PM 5 someone that you also know was associated or friends with Ron
02:48PM 6 Serio?

02:48PM 7 A. Yes.

02:48PM 8 Q. As time went on, was Anthony Gerace involved in
02:48PM 9 distributing marijuana with Ron Serio and others you were
02:48PM 10 involved with?

02:48PM 11 A. Yes.

02:48PM 12 **MR. SINGER:** Objection, foundation.

02:48PM 13 **THE WITNESS:** He was.

02:48PM 14 **THE COURT:** Yeah, why don't you lay a foundation.

02:48PM 15 **MR. TRIPI:** Yes, Judge.

02:48PM 16 **THE COURT:** Sustained.

02:48PM 17 **BY MR. TRIPI:**

02:48PM 18 Q. You indicated that you participated for approximately
02:48PM 19 eleven years in marijuana distribution?

02:48PM 20 A. Yes.

02:48PM 21 Q. And that -- did that distribution evolve over time in
02:48PM 22 terms of the different types of people involved, as well as
02:48PM 23 the different methods of distribution?

02:48PM 24 A. It did.

02:48PM 25 Q. Were you aware of different people who became involved at

02:48PM

1 various points in time?

02:48PM

2 A. Yes.

02:48PM

3 Q. Did you become aware of that through your participation

02:48PM

4 in the conspiracy?

02:48PM

5 A. Yes.

02:48PM

6 Q. And conversations you had with people?

02:48PM

7 A. Yes.

02:48PM

8 Q. At some point, did you become aware that Anthony Gerace

02:49PM

9 was involved?

02:49PM

10 A. I did, yes.

02:49PM

11 Q. And who was Anthony Gerace close with based upon your

02:49PM

12 participation in that conspiracy?

02:49PM

13 A. He was close with Ron Serio.

02:49PM

14 Q. And based upon your involvement and discussions you had,

02:49PM

15 what was your understanding of the nature of Anthony's role

02:49PM

16 with Ron Serio?

02:49PM

17 A. Anthony was getting marijuana, large quantities, from

02:49PM

18 Ron, and he was distributing it.

02:50PM

19 Q. Now, I asked you a moment ago about a situation with

02:50PM

20 Peter Gerace and U.S. Probation at Pharaoh's; do you recall

02:50PM

21 that?

02:50PM

22 A. Yes.

02:50PM

23 Q. Shifting to Anthony Gerace, did you ever have any

02:50PM

24 conversations with the defendant about any assistance he

02:50PM

25 provided to Anthony Gerace?

02:50PM 1 A. Yes.

02:50PM 2 Q. And approximately when were those conversations?

02:50PM 3 A. Oh, approximate dates were late 2000s, like 2013, '14,

02:50PM 4 '15.

02:50PM 5 Q. Can you describe that conversation that you had with the

02:50PM 6 defendant as it related to assistance he provided to Anthony

02:50PM 7 Gerace?

02:50PM 8 A. Anthony had been -- he got arrested with possession of

02:50PM 9 cocaine, I believe it was. The amount -- I think it was 2 or

02:50PM 10 3 ounces of cocaine. And he had reached out to a contact --

02:51PM 11 Q. Can you use names, please?

02:51PM 12 A. I'm sorry.

02:51PM 13 Q. When you use "he," it's hard to follow.

02:51PM 14 A. I apologize.

02:51PM 15 Q. You're okay.

02:51PM 16 A. The defendant, Joseph Bongiovanni, reached out to

02:51PM 17 contacts he had in the Amherst Police Department to help him.

02:51PM 18 Q. And this is based upon what the defendant told you?

02:51PM 19 A. Yes.

02:51PM 20 Q. Did he tell you anything more about that?

02:51PM 21 A. No.

02:51PM 22 **THE COURT:** Mr. Tripi, is this a good time to break?

02:51PM 23 **MR. TRIPI:** Sure, Your Honor.

02:51PM 24 **THE COURT:** Let's take our afternoon break now.

02:51PM 25 Please remember my instructions about not talking

1 about the case with anyone, including each other, and not
2 making up your minds.

3 See you back here in 10 or 15 minutes.

4 (Jury excused at 2:51 p.m.)

5 **THE COURT:** Anything we need to put on the record?

6 **MR. TRIPI:** No, Your Honor.

7 **MR. SINGER:** Just one moment, Judge.

8 **THE COURT:** Sure.

9 **MR. SINGER:** No, Judge, thank you.

10 **THE COURT:** Mr. Tripi, do you have a sense of how
11 much longer you're going to be with this witness? The rest of
12 the day?

13 **MR. TRIPI:** I think so, Judge, I think I'll probably
14 finish tomorrow morning. We budgeted the rest of the day for
15 him.

16 **THE COURT:** Okay.

17 **MR. TRIPI:** I think realistically, not to speak for
18 the defense, I think this witness probably eats up today and
19 most of tomorrow.

20 **THE COURT:** Yeah, that's what I figured from the
21 witness list. I just wanted to have a sense of how much
22 longer you think.

23 **MR. TRIPI:** Yeah, my outline is like 39 pages. I'm
24 at page 17.

25 **THE COURT:** Okay. Great. We'll see you folks in

about 15 minutes.

THE CLERK: All rise.

(Off the record at 2:53 p.m.)

(Back on the record at 3:08 p.m.)

(Jury not present.)

THE CLERK: All rise.

THE COURT: Please be seated.

THE CLERK: We are back on the record for the continuation of the jury trial in case number 19-cr-227, United States of America versus Joseph Bongiovanni.

All counsel and parties are present.

THE COURT: Are we ready to resume?

MR. TRIPI: Yes, Judge.

MR. SINGER: Yes, Your Honor.

THE COURT: Let's bring them back, please, Pat.

(Jury seated at 3:10 p.m.)

THE COURT: The record will reflect that all our jurors are present again.

I remind the witness that he's still under oath.

Mr. Tripi, you may continue.

MR. TRIPI: Thank you, Your Honor.

BY MR. TRIPI:

Q. Mr. Selva, when we broke, I was asking you some questions about the defendant and a situation regarding Anthony Gerace.

A. Yes.

03:10PM 1 Q. Regarding -- regarding that assistance to Anthony Gerace
03:11PM 2 regarding that cocaine that you talked about, what, if
03:11PM 3 anything, did the defendant say to you about how he first got
03:11PM 4 involved or how he first was notified about Anthony's
03:11PM 5 situation?

03:11PM 6 A. He had got a call from Peter. Peter called him. Peter
03:11PM 7 Gerace called.

03:11PM 8 Q. Called who?

03:11PM 9 A. The defendant. And said that his brother got in trouble.
03:11PM 10 And if he can reach out to somebody in the Amherst Police
03:11PM 11 Department to help him.

03:11PM 12 Q. When he was telling you this information, where were you
03:11PM 13 guys, do you recall?

03:11PM 14 A. I don't recall.

03:11PM 15 Q. When he was telling you the story about helping Anthony,
03:11PM 16 what was his demeanor?

03:11PM 17 A. Casual. I mean, just -- he was helping a friend.

03:12PM 18 Q. Now, regarding the relationship between Bongiovanni and
03:12PM 19 Peter Gerace, did the defendant ever tell you about any trips
03:12PM 20 that he took with Peter Gerace?

03:12PM 21 A. Yes.

03:12PM 22 Q. What trips did he tell you about?

03:12PM 23 A. Trip to Las Vegas. I believe, maybe, New York. Canada.
03:12PM 24 They traveled together.

03:12PM 25 Q. Had you ever traveled with the defendant?

03:12PM

1 A. Yes.

03:12PM

2 Q. Where?

03:12PM

3 A. Cabo San Lucas. Gone to Florida with him. Came out to

03:12PM

4 Arizona when I lived out there.

03:12PM

5 Q. The defendant visited you in Arizona?

03:12PM

6 A. Yes.

03:12PM

7 Q. I'd like to direct your attention to about 2008, okay?

03:13PM

8 A. Okay.

03:13PM

9 Q. What was your financial situation like by 2008?

03:13PM

10 A. It was -- it was bad. I had -- trying to -- I filed

03:13PM

11 bankruptcy. And I was paying child support. And trying to

03:13PM

12 take care of my kids. So, I was working two jobs again.

03:13PM

13 Q. What jobs were you working?

03:13PM

14 A. I was in sales again, and in the cell phone business, and

03:13PM

15 I was tending bar on the weekends.

03:13PM

16 Q. And at that point in your life, did you pursue an

03:13PM

17 opportunity to make money through illegal means?

03:13PM

18 A. Yes.

03:13PM

19 Q. What did you do?

03:13PM

20 A. I reached out to Michael Masecchia, and I knew what he

03:13PM

21 was involved in, with a marijuana operation. And I wanted to

03:14PM

22 get involved in it.

03:14PM

23 Q. Who did you first approach about becoming involved in

03:14PM

24 that marijuana grow operation?

03:14PM

25 A. It was Mike. Well, I talked to Joe Tomasello first, and

03:14PM

1 then Mike.

03:14PM

2 Q. Was Joe Tomasello someone who was involved with it at the

03:14PM

3 time?

03:14PM

4 A. Yes.

03:14PM

5 Q. And was he one of those friends from childhood that

03:14PM

6 you've talked about earlier in your testimony?

03:14PM

7 A. Yes.

03:14PM

8 Q. Do you remember where you were when you first talked to

03:14PM

9 Joe Tomasello about getting involved in it?

03:14PM

10 A. I believe it was Hertel, M.T. Pocket's or Gabels or

03:14PM

11 something.

03:14PM

12 Q. Are those two bars that you guys would frequent?

03:14PM

13 A. Yeah, those are bars in the North Buffalo area, correct.

03:14PM

14 Q. Are those two of the bars that you would commonly go to

03:14PM

15 on Hertel?

03:14PM

16 A. Yes.

03:14PM

17 Q. And when you're discussing with Tomasello, do you express

03:15PM

18 your desire to become involved?

03:15PM

19 A. I did. Yes.

03:15PM

20 Q. What did you say to him?

03:15PM

21 A. I told him, I says, what can I do to get involved? I

03:15PM

22 just came out of my bankruptcy, and I'm swimming in debt from

03:15PM

23 child support, and I have to keep -- take care of my kids and

03:15PM

24 pay my bills.

03:15PM

25 And he said well reach out to Mike and express to him

1 that you want to get involved. He can tell you more about
2 it.

3 And I did. I reached out to him. And he told me what my
4 role in the operation would be if I wanted to get involved.

5 Q. Okay. So you first talked to Tomasello and he tells you
6 you have to talk to Mike?

7 A. Correct.

8 Q. What did Tomasello tell you about Mike's role?

9 A. He was -- he was really calling the shots, so to speak.

10 You know, everything would go through him.

11 Q. And, so, after that conversation with Tomasello, what did
12 you do as it relates to getting in touch with Mike Masecchia?

13 A. I reached out to him. Called him on the phone. We met.

14 I believe we met, again, it was on Hertel, I think Gables or

15 M.T. Pocket's, one of the bars in the neighborhood. And I

16 expressed my interest. I wanted to get involved, told him my

17 situation again, coming out of bankruptcy, I'm experiencing a

18 lot of debt. And I have to pay -- I need to keep up on my

19 child support for my kids.

20 Q. And what did Masecchia tell -- what, if anything, did

21 Masecchia tell you at that time about what the operation was?

22 A. It was an outdoor operation at that point. They had

23 different places, Franklinville, Angelica, explained to me

24 how it worked. You have get the plants ready on the indoor

25 side, and then you bring them out when they're ready to be --

1 there's a certain stage. And then you plant them in the
2 ground. And then there would be a lot of work involved
3 taking care of them.

4 Q. Okay.

5 **MR. SINGER:** Judge, I'm sorry can you ask Mr. Selva
6 to pull his microphone --

7 **MR. TRIPI:** Yeah, we need you to keep your voice up a
8 little bit.

9 **THE WITNESS:** I'm sorry.

10 **MR. TRIPI:** Yeah, and it's a little hard to hear you,
11 okay.

12 **THE WITNESS:** Sorry.

13 **BY MR. TRIPI:**

14 Q. So, for purposes of clarity, I'm going to repeat that
15 question?

16 A. Sure.

17 Q. And I'm going to ask you to keep your voice up.

18 A. Okay.

19 Q. What did Masecchia tell you about what the operation, the
20 marijuana grow operation involved?

21 A. It involved being outdoors. There were different spots
22 they had outside. Two, at that point. And the process
23 involved, from getting the plants ready, on an indoor basis,
24 and then bringing them outside to plant them, and then you'd
25 have to take care of them. So.

03:18PM 1 Q. All right. Let's break that down. What did Masecchia
03:18PM 2 tell you about getting the plants ready?

03:18PM 3 A. You would need a space, you would need a place to do
03:18PM 4 that. I offered up my basement. There's a cloning
03:18PM 5 procedure, we would do that in my basement. And then once
03:18PM 6 that was done, we would take them and transplant them and
03:18PM 7 plant them outside.

03:18PM 8 Q. So you offered to clone the plants in your basement?

03:18PM 9 A. Yes.

03:18PM 10 Q. And describe for the jury what that involves.

03:18PM 11 A. It's a -- you get a clone machine. And there's what's
03:18PM 12 called a mother plant. You clip a leaf off that, or a stem,
03:18PM 13 and you put it in the machine. And then once it -- it shoots
03:18PM 14 water and there's chemicals you buy, it shoots water above or
03:18PM 15 into the -- the into the clone, and then once it roots, you
03:19PM 16 transplant it into a plant. A plant case, small plant case,
03:19PM 17 and then you take it outside.

03:19PM 18 Q. So you agreed to get help get the plants ready?

03:19PM 19 A. Yes.

03:19PM 20 Q. What, if anything, else did you agree to do based on your
03:19PM 21 conversation with Masecchia?

03:19PM 22 A. I could reach out to Mr. Bongiovanni to see if we can get
03:19PM 23 some assistance.

03:19PM 24 Q. Okay. Before we get to that part of the conversation,
03:19PM 25 was there any part of the discussion that related to you

03:19PM 1 doing actual work at the site of the grows?

03:19PM 2 A. Yes.

03:19PM 3 Q. In Angelica and Franklinville?

03:19PM 4 A. Yes.

03:19PM 5 Q. What was that part of the conversation?

03:19PM 6 A. Taking care of them. Different times when we would go.

03:19PM 7 What's involved. Watering, that type thing.

03:19PM 8 Q. Tell the jury what is involved in the grow process on the

03:19PM 9 how?

03:19PM 10 A. There's a lot of care, you have to water them regularly,

03:20PM 11 you have to make sure there's no animal, you get deer

03:20PM 12 repellant, and you put it around the bases to keep the deer

03:20PM 13 away, and you just take care of them. With the hot summers

03:20PM 14 we have, so there was constantly a need to get out there.

03:20PM 15 You have to take time from work, you drive out there and you

03:20PM 16 water them and take care of them.

03:20PM 17 Q. And what -- what is the marijuana grow season here in the

03:20PM 18 Buffalo area?

03:20PM 19 A. Outdoor grow?

03:20PM 20 Q. Outdoor.

03:20PM 21 A. Usually you want to have them in the ground by Memorial

03:20PM 22 Day, but there's a process that leads up to that. There's

03:20PM 23 like a month or so prior to that you got to get them ready.

03:20PM 24 And then you would take them out of the ground in October.

03:20PM 25 Q. Okay. So, just to break that down, the prepping the

03:20PM 1 plants is the indoor cloning part?

03:21PM 2 A. Yes. Cloning, and then once they get a root, you

03:21PM 3 transplant them into a little pot. And then you take those

03:21PM 4 pots outside and you put them in the ground.

03:21PM 5 Q. And that happens -- that part of the process happens in

03:21PM 6 March, April?

03:21PM 7 A. Getting them ready, yeah, April, 'cuz it takes about six

03:21PM 8 weeks, so usually April, first two weeks in May. And then

03:21PM 9 you want to get them out by Memorial Day.

03:21PM 10 Q. And what, if anything, did Masecchia tell you was

03:21PM 11 involved in helping with the grow?

03:21PM 12 A. He mentioned other guys that I knew from the

03:21PM 13 neighborhood.

03:21PM 14 Q. Who?

03:21PM 15 A. Anthony Martone, Sal Lima, Dave Hersey, himself, and Joe

03:21PM 16 Tomasello.

03:21PM 17 Q. And I think you mentioned Sal Lima earlier. With the

03:22PM 18 exception of Sal Lima, was the defendant friends growing up

03:22PM 19 with Hersey, Tomasello, Masecchia, and Martone?

03:22PM 20 A. Yes.

03:22PM 21 Q. I think -- I don't think we've mentioned the name Martone

03:22PM 22 before. By that point in time in 2008, how long had you

03:22PM 23 known Martone?

03:22PM 24 A. Most of my life. I mean, since I was a kid.

03:22PM 25 Q. How long had the defendant known Martone?

03:22PM 1 A. About the same time.

03:22PM 2 Q. And what, if anything, in your discussions with Masecchia
03:22PM 3 did he tell you about the cashing out part of the process or
03:22PM 4 the turning the plants into money?

03:22PM 5 A. I'm sorry, who -- who said --

03:22PM 6 Q. What, if anything, did you and Masecchia discuss about
03:22PM 7 once the grow was done? I should phrase it that way. Once
03:22PM 8 the grow was done, getting the plants and then distributing
03:22PM 9 them?

03:22PM 10 A. We would reach out to Ron Serio for that. There was a
03:22PM 11 process. You'd have to cut them down, you hang them and you
03:23PM 12 dry them, and then you clip them and bag them. And then once
03:23PM 13 that was done, Ron would be the guy who we would -- Mike
03:23PM 14 would reach out to and cash us out.

03:23PM 15 Q. So, two grow locations. How many plants at each grow?

03:23PM 16 A. Outdoors?

03:23PM 17 Q. Yes.

03:23PM 18 A. 50 plus.

03:23PM 19 Q. And how many pounds of marijuana would you -- was the
03:23PM 20 hope for you to get per -- per plant?

03:23PM 21 A. Hope was a pound a plant. It never really worked out
03:23PM 22 that way. You lost a lot through the elements. So maybe it
03:23PM 23 was, like, a half a pound, three quarters of a pound.

03:23PM 24 Q. Okay. And, so if you had to estimate, how many pounds
03:23PM 25 for each grow you guys were getting?

03:23PM 1 A. Probably about -- with loss, probably 35, 40 pounds.

03:24PM 2 Q. So that's 35 to 40 pounds, times two, right?

03:24PM 3 A. Times two.

03:24PM 4 Q. Okay. So 70 to 80 plants?

03:24PM 5 A. Yes.

03:24PM 6 Q. Or pounds?

03:24PM 7 A. Yes.

03:24PM 8 Q. And Ron Serio was taking all that marijuana from these

03:24PM 9 grows?

03:24PM 10 A. Most of it. We would keep some as well and just sell it,

03:24PM 11 but the majority of it.

03:24PM 12 Q. And how much per pound was the going rate for the outdoor

03:24PM 13 grow marijuana?

03:24PM 14 A. I believe 2,800 at that time.

03:24PM 15 Q. \$2,800 per pound?

03:24PM 16 A. Yes, I'm sorry. 2,800 per pound.

03:24PM 17 Q. So, a crop would be \$2,800 times 70 or 80 depending on

03:24PM 18 how many pounds you got?

03:24PM 19 A. Depending what you got, yes.

03:24PM 20 Q. Okay.

03:24PM 21 A. It didn't always work out that way, but yes.

03:24PM 22 Q. Did you agree with Masecchia to take part in all of those

03:25PM 23 parts of the operation?

03:25PM 24 A. I did.

03:25PM 25 Q. Did you also agree to transport marijuana from the grow

1 sites to Masecchia to get ready for distribution to Serio?

2 A. Yes.

3 Q. And how would you do that? How what was your plan of how
4 to transport the marijuana from those two grow sites back to
5 the Buffalo area?

6 A. In my truck. We would use two trucks. We would all do
7 it during the day. I had an SUV. So once it was clipped and
8 bagged, we'd have to bring it into the city to get ready to
9 get it to Ron, or however much we were going to keep.

10 Q. Did you do anything to conceal the marijuana in your
11 truck? You're driving it from either Franklinville or
12 Angelica, a distance, right?

13 A. Yes.

14 Q. What did you do to conceal it in your vehicle?

15 A. I had a -- in my SUV, there was a cover that I could --

16 Q. Keep your voice up, please.

17 A. I'm sorry. In my SUV, in the back, there was a cover
18 that I pulled over like a sliding -- I don't know if you're
19 familiar with -- with any SUV, you put a rack up, and it was
20 like a shade. So I would lay the pounds down there with the
21 blanket over it, and then pull the shade over it, then drive
22 during the day.

23 Q. Why during the day?

24 A. Try to -- well, let me scratch that. It was actually
25 during -- we tried to move during rush hour and blend in.

03:26PM 1 Q. Now, during this initial discussion with Masecchia, did
03:26PM 2 you also have a conversation with him regarding the
03:26PM 3 defendant?
03:26PM 4 A. Yes.
03:26PM 5 Q. Describe your conversation with Masecchia regarding the
03:26PM 6 defendant.
03:26PM 7 A. He wanted me to reach out to him.
03:26PM 8 Q. Please use names, okay?
03:26PM 9 A. He wanted me to reach out to the defendant and see if he
03:27PM 10 could provide any information if there is an investigation
03:27PM 11 going on while we were doing this.
03:27PM 12 Q. Is best you can, what were Masecchia's words to you when
03:27PM 13 he asked you to do that.
03:27PM 14 A. He said, reach out to him, Ron's prepared to pay, and
03:27PM 15 myself, so I did.
03:27PM 16 Q. Reach out to him for what?
03:27PM 17 A. To participate. To get involved and kind of like watch
03:27PM 18 over, if there's anything going on. Any investigation that
03:27PM 19 type thing.
03:27PM 20 Q. What did you understand Masecchia to be asking you to do?
03:27PM 21 A. To bribe -- bribe a federal agent.
03:27PM 22 Q. At that point, who was closer with the defendant, you or
03:27PM 23 Masecchia?
03:27PM 24 A. Me.
03:27PM 25 Q. When you were having your discussions with Masecchia for

03:28PM 1 the things that you agreed to do, to include talking to the
03:28PM 2 defendant, was there an agreement as to what you would be
03:28PM 3 paid?

03:28PM 4 A. Yes.

03:28PM 5 Q. What was your agreement with Masecchia as to your
03:28PM 6 benefit?

03:28PM 7 A. To my benefit? It was, well, you're talking about from
03:28PM 8 the -- from the --

03:28PM 9 Q. What were you getting, what were you getting for your
03:28PM 10 role in this?

03:28PM 11 A. 25, 20 to 25 percent of the profit from the grow.

03:28PM 12 Q. Now, between 2008 and 2017 or '18 as you indicated
03:28PM 13 before, was that 20 to 25 percent consistent?

03:28PM 14 A. Yes.

03:29PM 15 Q. Did the -- did the dollar amount vary each year depending
03:29PM 16 on the success of the grow?

03:29PM 17 A. It did.

03:29PM 18 Q. As an average, what would you estimate your share of the
03:29PM 19 unlawful proceeds from this marijuana distribution was per
03:29PM 20 year?

03:29PM 21 A. 15- to 20,000.

03:29PM 22 Q. Some years, was it higher?

03:29PM 23 A. Some years it was higher, depending on how much was
03:29PM 24 actually valid and good to take.

03:29PM 25 Q. Now, to be clear, you didn't claim any of that illegal

03:29PM 1 money on your taxes, right?

03:29PM 2 A. No.

03:29PM 3 Q. Why didn't do you that?

03:29PM 4 A. Why didn't I do that?

03:29PM 5 Q. Why didn't you claim your marijuana profits on your
03:29PM 6 taxes?

03:29PM 7 A. I don't know, it was all cash.

03:30PM 8 Q. Would that be a quick way to get yourself in trouble?

03:30PM 9 A. Absolutely.

03:30PM 10 Q. When you agreed with Masecchia to approach the defendant,
03:30PM 11 was that to give the group protection?

03:30PM 12 A. Yes.

03:30PM 13 Q. And at that point, what made you confident that you could
03:30PM 14 approach this defendant about your involvement in this
03:30PM 15 marijuana trafficking and requesting him to look out for the
03:30PM 16 group?

03:30PM 17 A. My relationship with him. We were close. And I felt
03:30PM 18 comfortable. And I thought he would have my back.

03:30PM 19 Q. Did the defendant also have a relationship with
03:30PM 20 Masecchia?

03:30PM 21 A. Yes.

03:30PM 22 Q. By that point in time, by 2008, how many times would you
03:31PM 23 estimate you and the defendant did cocaine together while he
03:31PM 24 was a DEA agent?

03:31PM 25 A. Five, ten.

25	A. Quite a bit.
----	-----------------

03:33PM 1 Q. How did your relationship with Masecchia evolve?

03:33PM 2 A. It evolved through this, we became closer, we spent more
03:33PM 3 time together. We'd go out frequently.

03:33PM 4 Q. Now, when you were getting involved with it, what was
03:33PM 5 your understanding of his -- what was your understanding of
03:33PM 6 his reputation as it related to Italian Organized Crime?

03:33PM 7 A. He was a -- a high-profile guy, and he was a made figure.

03:33PM 8 Q. Now, as you're getting involved in this grow and getting
03:33PM 9 closer, did you have a conversation with Masecchia and you
03:33PM 10 specifically asked him?

03:33PM 11 A. Yes.

03:33PM 12 Q. Describe that conversation for the jury.

03:33PM 13 A. I asked him, I says, I'm hearing you have a -- he has a
03:33PM 14 reputation of being a tough guy. And I asked him, I says,
03:33PM 15 are you connected? Are you a made guy?

03:33PM 16 And he acknowledged it. He said yes.

03:33PM 17 Q. So did he confirm what you had thought for a long time?

03:34PM 18 A. Yes.

03:34PM 19 Q. As time went on, did Masecchia ever make any comments to
03:34PM 20 you about what he -- what, if anything, he had to do with the
03:34PM 21 money that he was making as a result of his involvement in
03:34PM 22 the marijuana trafficking?

03:34PM 23 A. He had to kick it up. He had to kick it up to -- I
03:34PM 24 believe it was --

03:34PM 25 **MR. SINGER:** Objection, speculation.

03:34PM 1 **THE COURT:** Yeah, don't answer. Don't answer. He
03:34PM 2 looks like he's starting to speculate here.

03:34PM 3 **MR. TRIPI:** Yeah, I'm going to --

03:34PM 4 **BY MR. TRIPI:**

03:35PM 5 Q. He said he needed to kick it up?

03:35PM 6 A. Yes, he needed to pay up --

03:35PM 7 Q. Okay.

03:35PM 8 A. -- to who he was underneath, speaking to.

03:35PM 9 Q. Okay. Now after you talked to Masecchia about
03:35PM 10 approaching Bongiovanni, how much time elapsed before you
03:35PM 11 actually first approached Bongiovanni before getting
03:35PM 12 involved?

03:35PM 13 A. A few months.

03:35PM 14 Q. Okay. And where is it in the grow process? Is this the
03:35PM 15 May process, the May part we talked about?

03:35PM 16 A. Yeah, it's mid summer. It's just starting to kick in.
03:35PM 17 It's starting to happen. They're in the ground already.
03:35PM 18 It's happening.

03:35PM 19 Q. How did you get in touch with the defendant, I should
03:35PM 20 say?

03:35PM 21 A. I called him on the phone.

03:35PM 22 Q. Did you have the defendant's phone number?

03:35PM 23 A. Yes.

03:35PM 24 Q. Do you know whether that was his work, his DEA work
03:36PM 25 number?

03:36PM 1 A. I believe so, yes.

03:36PM 2 Q. And did you have the same phone number for a long time?

03:36PM 3 A. I did.

03:36PM 4 Q. What was your phone number that you had for a long time?

03:36PM 5 A. 716-903-1654.

03:36PM 6 Q. And was that a number the defendant had?

03:36PM 7 A. Yes.

03:36PM 8 Q. How many years would you estimate the defendant had

03:36PM 9 your -- that phone number for you?

03:36PM 10 A. 15, 16 years. I think I got it in 2001, I changed it in

03:36PM 11 '17.

03:36PM 12 Q. Okay. So you had that phone number from 2001 until when?

03:36PM 13 A. Until 2017, I changed it.

03:36PM 14 Q. Describe your phone call with the defendant while you

03:36PM 15 were requesting to meet.

03:36PM 16 A. I told him I wanted to talk to him about something. We

03:37PM 17 met out for a beer. Drank. And I believe it was on Hertel

03:37PM 18 where we met. M.T. Pocket's, I believe.

03:37PM 19 Q. And was there a reason you didn't just meet at your house

03:37PM 20 or his house?

03:37PM 21 A. Yeah. It was just easier just to meet out and do it

03:37PM 22 socially.

03:37PM 23 Q. Did you have family who stayed at your house?

03:37PM 24 A. My kids and -- my younger daughter was actually living --

03:37PM 25 getting -- she was there quite a bit. My kids were there

03:37PM

1 quite a bit.

03:37PM

2 Q. Where was the defendant staying at this time?

03:37PM

3 A. I believe on Lovering.

03:37PM

4 Q. Were his parents living there below him?

03:37PM

5 A. I believe so.

03:37PM

6 Q. All right. Describe your initial meeting with the

03:38PM

7 defendant at a bar on Hertel.

03:38PM

8 A. Told him what we have going on. We have an outdoor grow

03:38PM

9 operation, and these guys were prepared to offer a financial

03:38PM

10 obligation to him to help him if he was to provide assistance

03:38PM

11 with any investigations, kind of like a watchful eye, so to

03:38PM

12 speak.

03:38PM

13 Q. Did you tell the defendant who asked you to ask him?

03:38PM

14 A. I did.

03:38PM

15 Q. What did you say?

03:38PM

16 A. I told him Mike told me to reach out to you, and see if

03:38PM

17 you would be willing to participate.

03:38PM

18 Q. What did the defendant say to that?

03:39PM

19 A. First he got upset. I could lose my career, that type

03:39PM

20 thing.

03:39PM

21 Q. When you were talking to him, did you tell him who else

03:39PM

22 was involved?

03:39PM

23 A. At, yes, I told him the outdoor operation, myself, Ron, I

03:39PM

24 explained to him how it worked, Ron was cashing everyone out,

03:39PM

25 Hersey, Martone, myself, Tomasello.

03:39PM 1 Q. And what did the defendant say?

03:39PM 2 A. He was hesitant at first.

03:39PM 3 Q. Describe the conversation.

03:39PM 4 A. He was hesitant. He got upset because he could lose his

03:39PM 5 career, that type thing. So, it didn't really go well.

03:39PM 6 Q. When he said that, what did you say?

03:40PM 7 A. I says, well, this can help you out because they're

03:40PM 8 willing to pay \$2,000 a month, and it could help with your

03:40PM 9 issues with your divorce and your expenses. So --

03:40PM 10 Q. What happened next?

03:40PM 11 A. It continued. Arranged another meeting. I reached out

03:40PM 12 to --

03:40PM 13 Q. Let me ask you this. How did you leave it at that first

03:40PM 14 meeting with the defendant?

03:40PM 15 A. I left him -- I'll get back to you. I wanted to talk to

03:40PM 16 Mike and Ron.

03:40PM 17 Q. How did he leave it with you? What did he say to you?

03:40PM 18 A. He was upset, and he didn't want to -- he was upset that

03:40PM 19 he could possibly lose his career, like I mentioned, and

03:41PM 20 wasn't totally bought on it yet.

03:41PM 21 Q. Wasn't totally bought on it yet?

03:41PM 22 A. No.

03:41PM 23 Q. Did he give you any reassurance that you would be okay?

03:41PM 24 A. He did.

03:41PM 25 Q. What did he say in that regard?

03:41PM 1 A. He said I'll have your back. But he wasn't really sold
03:41PM 2 on the whole idea as of yet.

03:41PM 3 Q. So what did you do?

03:41PM 4 A. I persuaded him. Told him that --

03:41PM 5 Q. Well, before that, did you go back and relay that to
03:41PM 6 Masecchia?

03:41PM 7 A. I did. I went back and relayed that to Masecchia and
03:41PM 8 Ron.

03:41PM 9 Q. Where did you meet? Let's -- where did you -- where did
03:41PM 10 you go, and where did you speak with Masecchia?

03:41PM 11 A. I called Masecchia on the phone. And I met him. I think
03:41PM 12 it was M.T. Pocket's, we usually met again on Hertel, and I
03:41PM 13 explained to him what happened.

03:41PM 14 I says, I'll talk to him again. And we'll set up another
03:42PM 15 meeting, and I'll see what -- where we can go with this.

03:42PM 16 I did. I reached back out.

03:42PM 17 Q. Wait. Wait, wait, wait. What exactly did you say to
03:42PM 18 Masecchia at the M.T. Pocket's meeting after your initial
03:42PM 19 conversation with Bongiovanni?

03:42PM 20 A. I told him he was upset about it because he could lose
03:42PM 21 his career, and he wasn't totally bought in on it yet.

03:42PM 22 Q. What did Masecchia say to you?

03:42PM 23 A. He said, well, explain to him the benefit, how it can
03:42PM 24 help him. Ron's willing to pay \$2,000 a month. So, reach
03:42PM 25 back out to him and talk to him about it. Which I did.

03:42PM 1 Q. How much time had elapsed from your conversation with
03:42PM 2 Joe, the defendant, to when you met with Masecchia at
03:42PM 3 M.T. Pocket's?

03:42PM 4 A. A few weeks, a week. It was a short time.

03:42PM 5 Q. And when you left off your first conversation with the
03:43PM 6 defendant, the way that conversation ended, did you believe
03:43PM 7 that you would be able to convince the defendant to do it
03:43PM 8 with money?

03:43PM 9 A. Yes.

03:43PM 10 Q. What made you believe that you would be able to convince
03:43PM 11 the defendant to do it?

03:43PM 12 A. Because of his situation, and just to get ahead, and my
03:43PM 13 relationship with him. So --

03:43PM 14 Q. After you spoke with Masecchia, and you gave him the
03:43PM 15 results of that conversation with Bongiovanni, and you
03:43PM 16 participated in the conversation that you just discussed for
03:43PM 17 the jury, what was the next thing you did in terms of meeting
03:43PM 18 up with the defendant to continue the conversation?

03:44PM 19 A. Called him again. We met again. Again, it was on
03:44PM 20 Hertel, I think this time it was Gables. Explained to him
03:44PM 21 that the offer's still there. And persuaded him. And he
03:44PM 22 agreed.

03:44PM 23 Q. How did you persuade him?

03:44PM 24 A. Kind of highlighted the benefit how it would help him
03:44PM 25 again. It would help him get over his expenses with his

03:44PM 1 ex-wife and the situation he's in right now.

03:44PM 2 Q. What do you mean by the situation he's in right now?

03:44PM 3 A. Paying maintenance and child support and all that.

03:44PM 4 Q. What did the defendant say?

03:44PM 5 A. He agreed upon it.

03:44PM 6 Q. What did he say?

03:44PM 7 A. He said, okay, I'll do what I can, and I'll kind of keep

03:44PM 8 a watchful eye at that point where we were.

03:45PM 9 Q. What was your understanding of "I'll do what I can" when

03:45PM 10 the defendant said it?

03:45PM 11 A. Making sure that nothing happens, if there's any

03:45PM 12 investigation or anything going on, he'll make sure he relays

03:45PM 13 that to me.

03:45PM 14 Q. At that point, did you go into any more of an explanation

03:45PM 15 about what was involved in the nature of the operation?

03:45PM 16 A. No. I explained to him how it worked.

03:45PM 17 Q. That's what I mean. You explained to him how it worked?

03:45PM 18 A. Yes.

03:45PM 19 Q. What did you say to the defendant?

03:45PM 20 A. Told him it's an outdoor operation. There's two

03:45PM 21 locations. And we would need information regarding if

03:45PM 22 anything were to happen with investigations from different

03:45PM 23 agents, the area where it is. So --

03:46PM 24 Q. And what was -- what was the purpose of getting

03:46PM 25 information? To do what?

03:46PM 1 A. To feel protected, feel safe. I mean, make sure we
03:46PM 2 didn't get busted.

03:46PM 3 Q. And what was the plan if the defendant had notified you
03:46PM 4 there was an investigation, was there a plan in place that
03:46PM 5 you had with Masecchia? What you would do?

03:46PM 6 A. With Masecchia?

03:46PM 7 Q. Yeah.

03:46PM 8 A. Yeah. We'd rip them out of the ground immediately and
03:46PM 9 destroy all evidence.

03:46PM 10 Q. When you -- once the defendant was in agreement on the
03:46PM 11 \$2,000, what was the agreement regarding the frequency of
03:46PM 12 those payments?

03:46PM 13 A. Once a month.

03:46PM 14 Q. Describe that part of the discussion for the jury.

03:46PM 15 A. The payment will be \$2,000 once a month. That would come
03:47PM 16 from Mike. Mike would meet him once a month. He took care
03:47PM 17 of that because he would get that from Ron, so it would be a
03:47PM 18 cash payment of \$2,000 per month.

03:47PM 19 Q. What was the discussion relating to the frequency of his
03:47PM 20 providing information?

03:47PM 21 A. We would meet regularly. Call him, we'd meet out for a
03:47PM 22 drink. What's going on? How is everything? We'll be
03:47PM 23 casual. Anything happening? No, everything's good. And
03:47PM 24 then relay that back to Ron and Mike.

03:47PM 25 Q. And how often were those meetings?

03:47PM 1 A. Few times a month.

03:47PM 2 Q. Do you know -- withdrawn.

03:47PM 3 During that discussion, did you also have a conversation
03:47PM 4 with the defendant regarding Masecchia's status with IOC?

03:48PM 5 A. Yes. Well, he --

03:48PM 6 Q. What did you -- what was the conversation in that regard?

03:48PM 7 A. Conversation was, well, he knew of Mike's status. And I
03:48PM 8 told him that, yes, Mike had told me that he is a made guy,
03:48PM 9 and he's a high-profile guy, and he's running this thing.

03:48PM 10 Q. What did the defendant say as about Mike's status as a
03:48PM 11 made guy?

03:48PM 12 A. He was concerned about it. He didn't really want to be
03:48PM 13 seen in public with him at all, that type thing.

03:48PM 14 Q. Did that factor into why he would meet with you to
03:48PM 15 provide information?

03:48PM 16 A. Yes. He would meet with me and provide me that
03:48PM 17 information.

03:48PM 18 And then Ron would give Mike the money. And he insisted
03:48PM 19 that he would just meet -- he had burner phones that he
03:48PM 20 worked with, so he would call him. I gave him the
03:48PM 21 defendant's phone number, and he would call him and meet him
03:48PM 22 at a location to pay him the cash.

03:49PM 23 Q. Again, you've got to use names because if you use "he"
03:49PM 24 people can't follow. So just to unpack that a little bit.
03:49PM 25 Mike had burner phones?

03:49PM

1 A. Yes.

03:49PM

2 Q. What is a burner phone?

03:49PM

3 A. It's a prepaid cell phone. There's no name attached to

03:49PM

4 it or anything. You can buy them, and when you're done,

03:49PM

5 throw them away.

03:49PM

6 Q. Is that -- what's the purpose of a burner phone?

03:49PM

7 A. To dissuade from any type of consistency in calling

03:49PM

8 patterns, that type thing.

03:49PM

9 Q. Okay. So it's to help not get caught?

03:49PM

10 A. To help not get caught, yes.

03:49PM

11 Q. And you provided Mike with Joe's number, or Joe with

03:49PM

12 Mike's number?

03:49PM

13 A. Mike with Joe's number.

03:49PM

14 Q. And how did Masecchia's status -- describe that part of

03:49PM

15 the conversation. How did his status as a made guy factor

03:50PM

16 into the discussion regarding how payments would be made and

03:50PM

17 who would get information?

03:50PM

18 A. I would get the information.

03:50PM

19 Mike would get the -- make the arrangements with Ron, and

03:50PM

20 then he would meet the defendant once a month to get the cash

03:50PM

21 to him.

03:50PM

22 Q. Who knew where those meets for the cash exchange were?

03:50PM

23 A. I don't know. It was between them.

03:50PM

24 Q. Between who?

03:50PM

25 A. Between Joe and Mike.

03:50PM 1 **THE CLERK:** Judge, I'm going to shut the blinds.

03:50PM 2 **THE COURT:** Go ahead.

03:51PM 3 **BY MR. TRIPI:**

03:51PM 4 Q. By the time this \$2,000-a-month arrangement agreement is
03:51PM 5 in place, what -- what year is it?

03:51PM 6 A. 2008 to, like, 2010. That time frame.

03:51PM 7 Q. How long did the payments persist at the \$2,000-per-month
03:51PM 8 level?

03:51PM 9 A. Two, almost three years.

03:51PM 10 Q. How frequently did Masecchia use burner phones?

03:51PM 11 A. All the time. Quite a bit. I mean, he had a regular
03:51PM 12 phone, but when he was conducting things regarding this, he
03:52PM 13 would use a burner phone.

03:52PM 14 Q. What do you mean by conducting things?

03:52PM 15 A. Like if he had to make a specific phone call regarding
03:52PM 16 this operation, he would use a burner phone.

03:52PM 17 Q. Were there any discussions about whether Bongiovanni, the
03:52PM 18 defendant, would meet Ron Serio?

03:52PM 19 A. No.

03:52PM 20 Q. Did they ever meet, as far as you know?

03:52PM 21 A. No.

03:52PM 22 Q. Was that intentional?

03:52PM 23 A. I don't know.

03:52PM 24 Q. Did the defendant ever express to you wanting to meet Ron
03:53PM 25 Serio?

03:53PM 1 A. No.

03:53PM 2 Q. After about, you said, three years, the payment lasted at
03:53PM 3 about the \$2,000-a-month level?

03:53PM 4 A. Yes.

03:53PM 5 Q. After three years or so, what happened to the amount of
03:53PM 6 the payment?

03:53PM 7 A. The amount, well, the operation had expanded.

03:53PM 8 Q. Just -- what happened to the amount of the payment,
03:53PM 9 first?

03:53PM 10 A. The amount stayed -- it stayed -- it stayed at 2,000 for
03:53PM 11 three years, and then it went up.

03:53PM 12 Q. What did it go up to?

03:53PM 13 A. \$4,000.

03:53PM 14 Q. Okay. Now, for those three years, were you having
03:53PM 15 regular meetings with the defendant?

03:53PM 16 A. Yes.

03:53PM 17 Q. For those three years, did he give you any advice
03:53PM 18 regarding law enforcement techniques or tactics?

03:53PM 19 A. Yes.

03:53PM 20 Q. What advice did the defendant give you?

03:53PM 21 A. Never speak over the phone. Be careful of your
03:54PM 22 surroundings. Watch for certain vehicles. Tinted SUVs. If
03:54PM 23 you're -- if you see a utility truck parked at the end of
03:54PM 24 your block for a long time, that could be a red flag, meaning
03:54PM 25 a few days, more than two or three days.

03:54PM 1 Q. Describe the discussion about never talking over the
03:54PM 2 phone. What did the defendant say?

03:54PM 3 A. Never talk over the phone, always do it in person. If
03:54PM 4 you make your phone call, be brief, just say you want to meet
03:54PM 5 him in a public place, and just talk, or however you arrange
03:54PM 6 that meeting, if it's at your house, whatever.

03:54PM 7 Q. And what was the context of the defendant saying to be
03:54PM 8 aware of your surroundings?

03:54PM 9 A. Be aware of if you're being followed. Be aware if
03:54PM 10 there's suspicious vehicles around. Just be aware. Tinted
03:54PM 11 windows. Like I said, SUVs.

03:55PM 12 Q. Was the defendant describing surveillance vehicles?

03:55PM 13 A. That's exactly, yes.

03:55PM 14 Q. What did he describe about surveillance vehicles?

03:55PM 15 A. He was describing what they look like. Chargers, SUVs, I
03:55PM 16 keep saying that because that was the majority of what came
03:55PM 17 up.

03:55PM 18 Q. What, if any, other tactics or methods did he talk about
03:55PM 19 with you other than phones and surveillance vehicles?

03:55PM 20 Anything else during that window of time?

03:55PM 21 A. I don't recall.

03:55PM 22 Q. What things did you express to the defendant that you and
03:55PM 23 Masecchia and any others were concerned about during that
03:55PM 24 time period?

03:55PM 25 A. Again, if there's an investigation, if anybody was

03:55PM 1 informing, if there was an informant, that we might know of.

03:56PM 2 Q. What do you mean by that?

03:56PM 3 A. Anybody within our group who might -- being snitched out

03:56PM 4 from.

03:56PM 5 Q. What do you mean by within our group?

03:56PM 6 A. Within Ron, Mike, myself, the group that was

03:56PM 7 participating in this.

03:56PM 8 Q. And for those three years, what reports were you getting

03:56PM 9 monthly from the defendant?

03:56PM 10 A. Everything was good. Everything was clear.

03:56PM 11 Q. Now, you said after about three years, the amount of

03:56PM 12 payments went up to about \$4,000. Over that three-year

03:56PM 13 period, what was happening to the operations, the

03:56PM 14 distribution operations?

03:56PM 15 A. It was expanding. It was getting bigger.

03:56PM 16 Q. Can you describe the ways in which it got bigger?

03:56PM 17 A. Yes. There were different venues they were getting it

03:56PM 18 from, from California, British Columbia, New York, it was

03:57PM 19 being transported by trucks over state lines, so it was

03:57PM 20 growing.

03:57PM 21 Q. Was anybody beginning to make trips to New York City?

03:57PM 22 A. Yes.

03:57PM 23 Q. Who were you aware of that was traveling to New York City

03:57PM 24 for marijuana?

03:57PM 25 A. Ron and Mike.

03:57PM 1 Q. When they would get ready for trips to New York City,
03:57PM 2 that was to get marijuana?

03:57PM 3 A. Yes.

03:57PM 4 Q. When they would get ready for a trip, were there any
03:57PM 5 requests or instructions that you would receive to ask the
03:57PM 6 defendant about?

03:57PM 7 A. Yes.

03:57PM 8 Q. What was that?

03:57PM 9 A. To reach out to him, tell them what they were doing, they
03:57PM 10 were going to New York. They were going to be picking up and
03:57PM 11 transporting marijuana back from the City to Buffalo.

03:57PM 12 Q. And what were you looking for the defendant to provide?

03:57PM 13 A. Provide if there was any information regarding if an
03:58PM 14 investigation was going on. If the all-clear was okay.

03:58PM 15 Q. What do you mean by the all-clear?

03:58PM 16 A. Meaning there was nothing going on, there was no
03:58PM 17 investigation, they were able to move freely up and down the
03:58PM 18 thruway.

03:58PM 19 Q. So in other words, nobody was onto their travels?

03:58PM 20 A. Exactly.

03:58PM 21 Q. Who -- who expressed to you -- withdrawn.

03:58PM 22 After those three years when the dollar amount then gets
03:58PM 23 moved up to \$4,000, how did that come about? What --
03:58PM 24 withdrawn.

03:58PM 25 What was the request of you by Masecchia and/or Serio?

03:58PM 1 A. You mean how it got --

03:58PM 2 **MR. SINGER:** Objection. Assumes facts not in
03:58PM 3 evidence.

03:58PM 4 **THE COURT:** Yeah, I agree with that. Sustained.

03:58PM 5 **BY MR. TRIPI:**

03:59PM 6 Q. Okay. Was there a request made of you by either Mike or
03:59PM 7 Ron as it relates to getting more protection?

03:59PM 8 A. Yes.

03:59PM 9 Q. Okay. Let me just ask another question.

03:59PM 10 Who had the conversation with you about wanting more
03:59PM 11 protection?

03:59PM 12 A. Mike. He had discussed it with Ron. He said the
03:59PM 13 operation is growing. They're doing different things, like I
03:59PM 14 just mentioned, getting it from different areas through
03:59PM 15 transporting it through trucking.

03:59PM 16 Reach out to Joe and see if he could provide any
03:59PM 17 additional information. And --

03:59PM 18 Q. What do you mean by "additional information?"

03:59PM 19 A. If there are different agencies involved because there
03:59PM 20 were different locations --

03:59PM 21 Q. Okay.

03:59PM 22 A. -- like I mentioned.

03:59PM 23 Q. Now what do you mean by different agencies?

03:59PM 24 A. Like if there was another agency having an investigation
04:00PM 25 because it was coming from California, British Columbia,

04:00PM 1 New York, if there are were any other agencies working, if
04:00PM 2 you could provide that information.

04:00PM 3 Q. Did were any specific agencies mentioned as an example?

04:00PM 4 A. No.

04:00PM 5 Q. Did Masecchia mention ICE in any conversations?

04:00PM 6 A. Masecchia did, yes.

04:00PM 7 Q. What did he say about ICE?

04:00PM 8 A. He mentioned ICE, because he was familiar with ICE. He
04:00PM 9 knew what they did. He said can you specifically ask if ICE
04:00PM 10 is involved.

04:00PM 11 Q. What was your understanding of what ICE was, the
04:00PM 12 reference to ICE?

04:00PM 13 A. I wasn't really familiar. I didn't -- just part of
04:00PM 14 Homeland Security. I'm not really quite sure. I didn't have
04:00PM 15 a good understanding of it.

04:00PM 16 Q. Now, during that time period leading up to the increased
04:01PM 17 dollar amount, what was -- what, if anything, was the
04:01PM 18 defendant saying about the amount of money that he was
04:01PM 19 getting, the \$2,000 a month? What, if anything, was he
04:01PM 20 expressing to you?

04:01PM 21 A. He was expressing his situation changing, and he needed
04:01PM 22 to make more money.

04:01PM 23 Q. What -- what do you mean by his situation changing?

04:01PM 24 A. Meaning his expenses. His expense.

04:01PM 25 Q. Can you be more detailed for the jury?

04:01PM 1 A. Yes.

04:01PM 2 Q. Please explain it to them.

04:01PM 3 A. Yes, at this point, he was still paying maintenance, he
04:01PM 4 was still paying child support. I believe he was with -- had
04:01PM 5 just gotten with, I believe, his wife, and she was getting
04:01PM 6 ready to move in with him. So there was additional expenses
04:01PM 7 that he would have.

04:01PM 8 Q. Did he tell you about those additional expenses?

04:01PM 9 A. Yes.

04:01PM 10 Q. Who did he say? What were they?

04:01PM 11 A. Originally, she was his tenant, and then she moved in
04:02PM 12 with him. And she was in nursing school, so he was paying
04:02PM 13 those expenses on top of his obligation to maintenance and
04:02PM 14 child support and living expenses.

04:02PM 15 Q. So you're talking about his wife, Lindsay?

04:02PM 16 A. Yes.

04:02PM 17 Q. Did she move in with the defendant along with her son?

04:02PM 18 A. Yes.

04:02PM 19 Q. And she went from being a tenant to someone living with
04:02PM 20 him?

04:02PM 21 A. Yes.

04:02PM 22 Q. What happened to that rental income when she moved in
04:02PM 23 with him?

04:02PM 24 A. He lost it.

04:02PM 25 Q. And this is 221 Lovering?

04:02PM

1 A. Yes.

04:02PM

2 Q. Now you mentioned trucking over the -- from British

04:02PM

3 Columbia. Is that Canada?

04:02PM

4 A. Yes.

04:02PM

5 Q. So, the operations now involved an international border

04:02PM

6 as time progressed?

04:02PM

7 A. Correct.

04:02PM

8 Q. All right. Where did you meet with the defendant prior

04:03PM

9 to the \$4,000 increase payment, where did you meet with the

04:03PM

10 defendant to discuss the request for more protection or more

04:03PM

11 coverage, essentially?

04:03PM

12 A. We met at a bar downtown.

04:03PM

13 Q. Okay.

04:03PM

14 A. Either, I don't recall, either Mother's or somewhere on

04:03PM

15 Chippewa.

04:03PM

16 Q. Is Mother's a bar on Virginia Street?

04:03PM

17 A. Yes.

04:03PM

18 Q. Was that another place you regularly went with the

04:03PM

19 defendant?

04:03PM

20 A. Yes.

04:03PM

21 Q. All right. Describe this conversation that you had with

04:03PM

22 him at this point.

04:03PM

23 A. Regarding, well, I explained to him that the operation

04:03PM

24 had expanded. And they were looking for any information

04:03PM

25 while the movements are happening with different agencies.

04:03PM 1 And it would be -- they would be willing to -- Mike had
04:04PM 2 mentioned to me that, and Ron, that they were willing to pay
04:04PM 3 \$4,000.
04:04PM 4 Q. Continue describing the conversation, please.
04:04PM 5 A. Then I says, additional information would be needed. He
04:04PM 6 agreed. And then we moved forward.
04:04PM 7 Q. What do you mean by you moved forward?
04:04PM 8 A. It was agreed upon that he would put a bigger, wider span
04:04PM 9 on it. If anything were to happen, he would provide the
04:04PM 10 information.
04:04PM 11 Q. Now, at that time, did you have an understanding of
04:04PM 12 Mr. Serio's gambling habits?
04:04PM 13 A. Yes.
04:04PM 14 Q. What were his gambling habits like?
04:04PM 15 A. He was out of control. He was gambling very heavy.
04:05PM 16 Consistently. Winning, losing, up, and down.
04:05PM 17 He was banned from casinos, 'cuz then he would go on a
04:05PM 18 win streak. And he got banned from, I believe, the Seneca
04:05PM 19 casino, the one in Canada, I think one or two in Las Vegas,
04:05PM 20 but he was gambling quite heavy.
04:05PM 21 Q. Had he moved around that time into a large house?
04:05PM 22 A. He did.
04:05PM 23 Q. Where was that?
04:05PM 24 A. On Lebrun.
04:05PM 25 Q. Is that in Amherst, New York?

04:05PM

1 A. Yes.

04:05PM

2 Q. And have you been there?

04:05PM

3 A. I was.

04:05PM

4 Q. So you referenced it a moment ago, but you were talking

04:05PM

5 about over time, you know, the payments increased, but

04:05PM

6 Lindsay, the defendant's current wife, had moved in with him

04:05PM

7 on Lovering, correct?

04:06PM

8 A. Correct.

04:06PM

9 Q. Did that follow pretty closely that relationship with

04:06PM

10 Melissa that you had referenced earlier?

04:06PM

11 A. Yes.

04:06PM

12 Q. I'd like to just be a little more detailed about what

04:06PM

13 conversations you had with the defendant around the time

04:06PM

14 Lindsay moved in with him and what he told you about the

04:06PM

15 finances that he was taking care of.

04:06PM

16 A. She went from tenant to they moved in, their relationship

04:06PM

17 evolved. And she was going to school full time as a nursing

04:06PM

18 student. He was taking care of all the expenses. Everything

04:06PM

19 from rent, any living expenses. He purchased her a car, I

04:06PM

20 believe a Jetta. And he still had his obligation to paying

04:07PM

21 maintenance and child support as well.

04:07PM

22 Q. What, if anything, did he tell you about who was paying

04:07PM

23 for her schooling?

04:07PM

24 A. I believe he was paying for it. Or she might have gotten

04:07PM

25 grant aid, I don't recall.

1 Q. Was he paying for the day-to-day living?

2 A. He was paying for the day-to-day expenses, any expenses
3 regarding books, that type thing.

4 Q. What happened to the frequency with which the defendant
5 went out to bars after starting to date Lindsay and
6 progressing towards getting married?

7 A. They went out quite a bit, dinners, bars. Group of
8 friends.

9 Q. Now, you had indicated earlier that you've used cocaine
10 with the defendant while he was an agent. I want to put some
11 time frames on that, okay?

12 A. Okay.

13 Q. In the roughly 2003 to 2008 window of time, sort of
14 before you get involved with the marijuana distribution, in
15 that pocket of time, about how many times had you used
16 cocaine with the defendant?

17 A. Can you repeat the time frame again?

18 Q. About 2004 to about 2008.

19 A. About five to ten.

20 Q. Now, after that, from like 2008 to 2019, probably,
21 approximately how many times would you estimate?

22 A. I'd say about the same, five to ten.

23 Q. And -- and at what locations?

24 A. In Buffalo. The Curtiss Hotel, I believe, SoHo.

25 **MR. SINGER:** Judge, I'm sorry. What time frame are

1 we talking about with these locations? It's not clear on the
2 question.

3 **MR. TRIPI:** I'll go one by one, Judge.

4 **THE COURT:** We're talking about 2008 to 2019, that
5 was my understanding.

6 **MR. TRIPI:** Yeah, I'll break it down more,
7 Your Honor.

8 **THE COURT:** Okay, go ahead.

9 **BY MR. TRIPI:**

10 Q. Did you go to Mother's with the defendant?

11 A. Yes.

12 Q. In the -- did you go out more frequent with the defendant
13 in the lead-up to his wedding in 2015?

14 A. Yes.

15 Q. So, if I can frame it in that context, so the year of
16 2014 --

17 A. Okay.

18 Q. -- were there more events relating to people who were
19 going to be going to the destination wedding, going out
20 together?

21 A. Yes.

22 Q. Okay. Was Mother's a location that you went to?

23 A. Yes, that was just with Joe and I.

24 Q. Okay.

25 A. Yes.

04:09PM 1 Q. And did you do cocaine with him there?

04:09PM 2 A. Yes.

04:09PM 3 Q. Describe that.

04:09PM 4 A. We did it in the bathroom. I had gotten it, and we went
04:09PM 5 in the bathroom and we did it. We did a blast.

04:10PM 6 Q. Who did you mean by "we did a blast?"

04:10PM 7 A. A blast of cocaine. Put a key in there, and put it up
04:10PM 8 your nose and snort it.

04:10PM 9 Q. Just a little bit?

04:10PM 10 A. Just a little bit.

04:10PM 11 Q. Did you go to SoHo on Chippewa with a group who would
04:10PM 12 later go to the wedding --

04:10PM 13 **MR. SINGER:** Objection, leading.

04:10PM 14 **THE COURT:** I'm sorry?

04:10PM 15 **MR. SINGER:** Leading.

04:10PM 16 **MR. TRIPI:** Foundation, Judge.

04:10PM 17 **THE COURT:** Overruled.

04:10PM 18 **BY MR. TRIPI:**

04:10PM 19 Q. Just to place you at the location, did you go to SoHo
04:10PM 20 with the group of people who would later going to the
04:10PM 21 wedding?

04:10PM 22 A. Yes.

04:10PM 23 Q. Who went to SoHo?

04:10PM 24 A. Myself -- well, I met them there. It was Joe, Tom
04:10PM 25 Doctor, his wife, Lindsay, her friends. There's a group of

04:10PM

1 people.

04:10PM

2 Q. At the time, did Lindsay have a sister named Ashley?

04:10PM

3 A. Yes.

04:10PM

4 Q. Who was she with at the time?

04:10PM

5 A. Tom Napoli.

04:11PM

6 Q. Is that the Napoli related to the suit place?

04:11PM

7 A. Yes.

04:11PM

8 Q. And was he part of the group?

04:11PM

9 A. Yes.

04:11PM

10 Q. And you mentioned the name Tom Doctor. Who was that?

04:11PM

11 A. Tom had worked with Joe, he was a Buffalo police

04:11PM

12 detective who was assigned to DEA task force.

04:11PM

13 Q. Were they friends?

04:11PM

14 A. Yes.

04:11PM

15 Q. And were these all people who were later going to go to

04:11PM

16 the wedding?

04:11PM

17 A. Yes.

04:11PM

18 Q. Was there cocaine use that night at SoHo?

04:11PM

19 A. Yes.

04:11PM

20 Q. Describe what you participated in and what you observed

04:11PM

21 the defendant do.

04:11PM

22 A. Again, drinking. I had gotten it, went in the bathroom,

04:11PM

23 and we did it again.

04:11PM

24 Q. Who did?

04:11PM

25 A. Myself and the defendant.

04:11PM 1 Q. Were any of the others in that group involved in using
04:11PM 2 that cocaine?

04:11PM 3 A. I don't remember. This is what I had, what I had gotten.
04:12PM 4 But there was other -- other people who had it there as well.

04:12PM 5 Q. Who else had it?

04:12PM 6 A. I believe Tom Doctor. I don't know if Tom Napoli had it.

04:12PM 7 Q. In the summer of 2014, was there an occasion you were at
04:12PM 8 Mickey Rats with the defendant?

04:12PM 9 A. Yes.

04:12PM 10 Q. And where is Mickey Rats?

04:12PM 11 A. That's Angola on the lake.

04:12PM 12 **MR. SINGER:** Judge, can we have a sidebar?

04:12PM 13 **THE COURT:** Sure.

04:12PM 14 (Sidebar discussion held on the record.)

04:12PM 15 **MR. SINGER:** Again, I renew my objection. This is
04:12PM 16 all leading.

04:12PM 17 **THE COURT:** It's not a leading question. A leading
04:12PM 18 question is a question that suggests the answer. Did you go
04:12PM 19 to Mickey Rats with the defendant in the summer of 2014 is not
04:12PM 20 a leading question.

04:12PM 21 **MR. SINGER:** The issue is, is that, if Mr. Tripi asks
04:13PM 22 the question as in when did you use cocaine with the
04:13PM 23 defendant, that's not a leading question.

04:13PM 24 And Mr. Selva can testify to the time that he
04:13PM 25 remembers those things.

1 And if he can't remember certain dates and times,
2 Mr. Tripi can refresh his recollection with those dates and
3 time if it's available to do that.

4 The problem is, here, Judge, is that we're going down
5 a road where you say do you remember doing this in 2018? And
6 you know what the answer is going to be. It's gonna be, oh,
7 yeah, I remember I was out with Joe and this is when we did
8 cocaine. Right? That's what's leading.

9 **THE COURT:** I don't think it's leading. I don't
10 think it's leading.

11 Now, we may be getting repetitive and into detail in
12 ways that -- but I don't think these questions are leading. A
13 leading question is a question that suggests the answer.

14 Did you go, I don't think that's a leading question.
15 I don't think that's a leading question.

16 I understand what you're saying, but I don't think
17 that's a leading question.

18 **MR. TRIPI:** And even if it were, Judge, with regard
19 to foundational setting the scene, a limited amount of leading
20 is generally permissible.

21 **THE COURT:** Yeah. But we are -- I mean, you've been
22 going on and on and on, you've sort of made your point, you've
23 got to move.

24 **MR. TRIPI:** I'm trying.

25 **THE COURT:** I know, I understand, I understand that,

1 but we don't need go into the kind of detail that you're
2 getting into. And quite frankly, some repetition.

3 **MR. TRIPI:** I understand. I'll try to move it along.

4 **THE COURT:** Please.

5 (End of sidebar discussion.)

6 **THE COURT:** You may continue.

7 **MR. TRIPI:** May I please have the last question read
8 back, Ms. Sawyer?

9 (The requested question and answer were read by the
10 court reporter.)

11 **BY MR. TRIPI:**

12 Q. And in or about the summer of 2014, who were you there
13 with?

14 A. Myself, Joe, Tom Doctor, I believe Dave Siwiec was there.
15 That's all I can remember at this point.

16 Q. So you, Tom Doctor, Dave Siwiec, and what transpired
17 there as it relates to cocaine use?

18 A. It was out there. Somebody, I forget who, had it.
19 Somebody had it, and we all did it.

20 Q. This is at the bar?

21 A. This is down the street at Doctor's, he had a cottage,
22 and we were there, and then we went to the bar, yes.

23 Q. Describe where you used the cocaine.

24 A. It was at the bar.

25 Q. And before going to the bar, where were you?

04:16PM 1 A. At the cottage.

04:16PM 2 Q. Whose cottage was that?

04:16PM 3 A. Tom Doctor's.

04:16PM 4 Q. Now directing your attention to the wedding in Cabo San

04:16PM 5 Lucas in Mexico in or about February of 2015, were you with a

04:16PM 6 group with the defendant there where cocaine was used?

04:16PM 7 A. Yes.

04:16PM 8 Q. Describe how that transpired, please.

04:16PM 9 A. We were there, all partying. Tom Napoli had gotten it.

04:16PM 10 I had gotten it from someone at the -- you're at a resort, so

04:16PM 11 we found out there was somebody there that could get it. And

04:16PM 12 it was in Mexico. And we got it. And we all partied and

04:16PM 13 took -- we participated.

04:16PM 14 Q. You said we all, but who's in that, that group?

04:16PM 15 A. Meaning, the group.

04:16PM 16 Q. Who?

04:16PM 17 A. Myself, Joe, Tom Doctor, Tom Napoli, I don't think any of

04:17PM 18 the girls did.

04:17PM 19 Q. What, if anything, did the defendant say about that event

04:17PM 20 happening, the cocaine usage happening at the wedding?

04:17PM 21 A. He didn't say anything about it. I mean, we were all

04:17PM 22 doing it together.

04:17PM 23 Q. Were you doing it in the open, or were you being

04:17PM 24 discreet?

04:17PM 25 A. We were being discreet.

04:17PM 1 Q. Describe that for the jury.

04:17PM 2 A. We were in one of the rooms, because we were at a resort.

04:17PM 3 So it had been broughten out, we did it, we were drinking,

04:17PM 4 and then we went downstairs. There was a nightclub there, so

04:17PM 5 it was discreet and in private.

04:17PM 6 Q. The last one I want to ask you about, you mentioned the

04:17PM 7 Curtiss Hotel. Would that have been later in time?

04:17PM 8 A. Later in time, 2017 I think.

04:17PM 9 Q. And who was present on that occasion?

04:18PM 10 A. Myself, Joe, I believe Gassan, his friend Gassan, that's

04:18PM 11 all I can remember.

04:18PM 12 Q. And what happened as it relates to any drug use at

04:18PM 13 that -- at the Curtiss Hotel, describe that for the jury.

04:18PM 14 A. I had gotten it again. I believe, yes, I had gotten it,

04:18PM 15 and we did a blast in the bathroom there again. A blast is

04:18PM 16 doing a key and snorting it.

04:18PM 17 Q. Now, you mentioned Tom Doctor a couple of times --

04:18PM 18 A. Yes.

04:18PM 19 Q. -- is that right?

04:18PM 20 A. Yes.

04:18PM 21 Q. And that's someone who had worked with the defendant?

04:18PM 22 A. Yes.

04:18PM 23 Q. Did there come a point in time where you had a

04:18PM 24 conversation with the defendant about the circumstances of

04:18PM 25 Tom Doctor's retirement?

04:18PM 1 A. It was done abruptly.

04:18PM 2 **MR. SINGER:** Objection relevance.

04:19PM 3 **BY MR. TRIPI:**

04:19PM 4 Q. That's a yes or a no.

04:19PM 5 A. Yes.

04:19PM 6 **THE COURT:** Next question. Overruled to that
04:19PM 7 question, but go ahead.

04:19PM 8 **BY MR. TRIPI:**

04:19PM 9 Q. What was your discussion with the defendant about the
04:19PM 10 circumstances of Tom Doctor's retirement?

04:19PM 11 **MR. SINGER:** Objection, relevance.

04:19PM 12 **THE COURT:** Yeah, so what -- do you want to come up?
04:19PM 13 Come on up.

04:19PM 14 (Sidebar discussion held on the record.)

04:19PM 15 **THE COURT:** So what's the relevance of Tom Doctor's
04:19PM 16 retirement?

04:19PM 17 **MR. TRIPI:** Yes. Your Honor, the defendant had a
04:19PM 18 conversation, I believe the testimony will demonstrate with
04:19PM 19 Lou Selva after Tom Doctor had come under some scrutiny
04:19PM 20 himself, at the tail end of his law enforcement career. Tom
04:19PM 21 doctor was -- believed he was under investigation, and he
04:19PM 22 abruptly retired, and then was never pursued or prosecuted.

04:20PM 23 The defendant, I anticipate there will be testimony
04:20PM 24 from this witness, had a conversation with Selva about
04:20PM 25 basically the fact that Tom Doctor did that, and there was no

repercussions regarding his -- regarding Doctor's --

THE COURT: As Doctor involved in this marijuana grow operation?

MR. TRIPI: No, it's the cocaine usage and stuff like that that we've talked about, and there will be another witness coming later who will lay out circumstances of cocaine usage with Bongiovanni. But the relevance is, the statements establish that Bongiovanni knew that Doctor retired abruptly, and then never got prosecuted. And then later on, I want to be able to -- I think that's relevant knowledge in the defendant's brain, I want to be able to argue on summation, that that is what the defendant did. He abruptly tried to retire. There's a consciousness of guilt argument there.

THE COURT: I don't think so.

MR. TRIPI: Okay. That's fine, Judge. You understand, I'm explaining my argument.

THE COURT: Oh, no, no --

MR. TRIPI: I wasn't trying to --

THE COURT: -- I'm not saying it's in bad faith, I'm saying it's too far afield.

MR. TRIPI: I'll move on.

(End of sidebar discussion.)

THE COURT: So the objection is sustained. You can ask another question.

04:21PM

1

BY MR. TRIPI:

04:21PM

2

Q. Okay. Are you familiar with an individual named Robert

04:21PM

3

Missana?

04:21PM

4

A. Yes.

04:21PM

5

Q. Who's Robert Missana?

04:21PM

6

A. Robert is a friend of ours, mine and Joe. He's been a

04:21PM

7

bartender for a long time. He's worked in Mother's, and I

04:21PM

8

believe right now he's working somewhere downtown.

04:21PM

9

Q. And how long had you known Robert Missana?

04:21PM

10

A. Since my teen years.

04:21PM

11

Q. And how long had the defendant known Robert Missana?

04:21PM

12

A. Same amount of time.

04:21PM

13

Q. And where was he a bartender?

04:21PM

14

A. He was a bartender at Mother's.

04:21PM

15

Q. Is that a place that you and the defendant went

04:22PM

16

relatively frequently?

04:22PM

17

A. Yes.

04:22PM

18

Q. Was there ever an occasion where you were present at

04:22PM

19

Mother's with the defendant when --

04:22PM

20

MR. SINGER: Judge, again, I'm going to object to

04:22PM

21

relevance.

04:22PM

22

THE COURT: He hasn't asked the question yet.

04:22PM

23

MR. SINGER: Well, with regard to Mr. Missana.

04:22PM

24

THE COURT: But he hasn't asked the question yet. I

04:22PM

25

don't know what the question is. Ask the question.

04:22PM

1 **BY MR. TRIPI:**

04:22PM

2 Q. Have you ever been present in a situation at Mother's

04:22PM

3 where you and the defendant and observed Robert Missana

04:22PM

4 selling cocaine?

04:22PM

5 A. Yes. We were there one time. Again, we frequented

04:22PM

6 there.

04:22PM

7 Q. Who was there?

04:22PM

8 A. Myself and the defendant. And he made a handoff to

04:22PM

9 somebody that was making a purchase over the bar, like, a

04:22PM

10 handshake, and Joe and I were standing right there.

04:22PM

11 Q. And what time of night was that?

04:22PM

12 A. Late. 11:00, 12:00. Maybe a little later.

04:22PM

13 Q. And where did Missana handoff the cocaine in relation to

04:23PM

14 where you and the defendant were at the bar?

04:23PM

15 A. We were from here to -- it was close.

04:23PM

16 Q. How many feet?

04:23PM

17 A. 2 feet, 3 feet.

04:23PM

18 Q. And was the defendant a DEA agent at the time?

04:23PM

19 A. Yes.

04:23PM

20 Q. All right. Getting back to the marijuana distribution.

04:23PM

21 You had mentioned the operation expanding regarding trucking.

04:23PM

22 Did it also involve purchasing properties and setting up grow

04:23PM

23 operations on those properties?

04:23PM

24 A. Yes.

04:23PM

25 Q. Can you describe that part of the operation for the jury?

04:23PM 1 A. Yes. Ron had purchased -- Ron was a contractor, and he
04:23PM 2 owned real estate. He would purchase homes, get them ready,
04:23PM 3 doubles, and while he was getting them ready, he'd set up a
04:23PM 4 grow op in the basement because he would control the movement
04:24PM 5 of what's -- whose coming in and out.

04:24PM 6 Q. And did there come a point in time in 2013 or '14 when he
04:24PM 7 set up a grow operation in your house?

04:24PM 8 A. Yes.

04:24PM 9 Q. And who was present when that grow operation was set up
04:24PM 10 in your house?

04:24PM 11 A. It was myself, Ron, and Mike.

04:24PM 12 Q. Masecchia?

04:24PM 13 A. Masecchia.

04:24PM 14 Q. And is this different than the process for cloning the
04:24PM 15 plants?

04:24PM 16 A. Yes. This is a little bit more involved. This is an
04:24PM 17 indoor grow, grow op.

04:24PM 18 Q. And how many plants were you setting up to grow to
04:24PM 19 maturity in your house?

04:24PM 20 A. We can get anywhere from 30 to 50. Again, it wasn't a
04:24PM 21 big space. You'd have to space them out.

04:24PM 22 Q. And who was in charge of setting up the grow operation?

04:24PM 23 A. Ron. Ron set it up with me and Mike.

04:24PM 24 Q. So, what was Ron Serio -- did he have a nickname at that
04:25PM 25 point?

04:25PM 1 A. Yeah. Greenie.

04:25PM 2 Q. And what was the reason for the nickname?

04:25PM 3 A. Because he was cashing -- he had the money.

04:25PM 4 Q. And did Masecchia have a nickname he went by?

04:25PM 5 A. He did.

04:25PM 6 Q. What was his nickname?

04:25PM 7 A. The gorilla.

04:25PM 8 Q. And what was the genesis of that nickname?

04:25PM 9 A. He's a tough guy, big, strong guy.

04:25PM 10 Q. So describe the grow operation as it was structured in

04:25PM 11 your house. Where was it within the house, that kind of

04:25PM 12 thing?

04:25PM 13 A. It was in my basement. Again, 40, 50 plants. There was

04:25PM 14 a light on a retractor, it would go back and forth. It was

04:25PM 15 set up on timers. I had an ionizer to help with the smell.

04:25PM 16 Ron set that up so there was no smell, because my kids would

04:25PM 17 come over, and it deteriorated it.

04:25PM 18 Q. And was this grow operation supplementing the outdoor

04:25PM 19 grows?

04:25PM 20 A. Yes.

04:26PM 21 Q. Was it supplementing the trucking of marijuana?

04:26PM 22 A. Yes.

04:26PM 23 Q. And were there other locations you were aware of where

04:26PM 24 this was occurring, generally aware of?

04:26PM 25 A. Yes.

04:26PM 1 Q. By this point in time when the marijuana grow operation
04:26PM 2 is set up in your house, had you provided names of Ron
04:26PM 3 Serio's inner circle to the defendant?

04:26PM 4 A. I did.

04:26PM 5 Q. And by this point in time, by the time the grow is set up
04:26PM 6 in your house, had Serio and Masecchia's partnership -- or,
04:26PM 7 withdrawn.

04:26PM 8 Had Serio and Masecchia's relationship evolved?

04:26PM 9 A. Yes.

04:26PM 10 Q. How did that evolve?

04:26PM 11 A. It's, well, evolved by getting bigger. They were doing
04:26PM 12 more, they had a big operation where -- I didn't know where
04:26PM 13 was, where they had a warehouse and they set up plants. Ron
04:27PM 14 was continuing to buy and flip these houses as well, setting
04:27PM 15 up the grow ops. And Mike was heavily involved with that.
04:27PM 16 And they also had distribution coming in from those three
04:27PM 17 areas I mentioned, California, British Columbia, and
04:27PM 18 New York.

04:27PM 19 Q. Was Serio also moving other types of drugs by that point?

04:27PM 20 A. I don't -- I don't know.

04:27PM 21 Q. Okay. Now, with respect to the outdoor grow, did
04:27PM 22 additional people become involved in that?

04:27PM 23 A. In the outdoor grow?

04:27PM 24 Q. Yes.

04:27PM 25 A. No, it was the same crew.

04:27PM 1 Q. Did there come a time when an individual named Sal Volpe
04:27PM 2 joined?

04:27PM 3 A. Sal did. Sal came in a little later. He would help out.
04:27PM 4 Because when the process happened when it was taken from --
04:27PM 5 when it was being hung, when it was harvest time, so to
04:27PM 6 speak, Sal would come in and help with that.

04:28PM 7 He is since deceased. He had passed away.

04:28PM 8 Q. Describe this passing of information regarding the names
04:28PM 9 that were in Serio's inner circle to the defendant.

04:28PM 10 A. Ron had given me a list of names.

04:28PM 11 Q. Who handed you the list?

04:28PM 12 A. Masecchia. Excuse me, let me rephrase that.

04:28PM 13 Ron had given Mike a list of names. Mike had given me
04:28PM 14 the list, which came from Ron. And there were names on there
04:28PM 15 that he was concerned about.

04:28PM 16 Q. What do you mean by concerned about?

04:28PM 17 A. If they were informants, if there was an investigation
04:28PM 18 with them.

04:28PM 19 Q. Before we get to that, those questions about informants,
04:28PM 20 I'm asking you were there -- was there a point in time where
04:28PM 21 you were requested to provide names of people who were close,
04:28PM 22 names and phones numbers of people who were close to Serio?

04:29PM 23 A. Yes. Ron had given me --

04:29PM 24 Q. Okay. That answer is yes.

04:29PM 25 What happened in that regard?

04:29PM 1 A. Ron had given me a list of numbers and names that he
04:29PM 2 wanted to have checked.

04:29PM 3 Q. Who handed you that list?

04:29PM 4 A. Again, it came from Masecchia.

04:29PM 5 Q. Okay.

04:29PM 6 A. So it always went from Ron, to Mike, to me. Because I
04:29PM 7 would see Mike a lot more.

04:29PM 8 Q. Okay. Did you get a list of names and phone numbers that
04:29PM 9 were people close to Serio?

04:29PM 10 A. Yeah, I did.

04:29PM 11 Q. What did you do with that list?

04:29PM 12 A. I gave it to Joe.

04:29PM 13 Q. Did you do anything to modify or change the list?

04:29PM 14 A. No.

04:29PM 15 Q. And -- did you rewrite the list? Anything like that?

04:29PM 16 A. I wrote it on a piece of paper for my record that I kept.

04:29PM 17 Q. Explain it to the jury.

04:29PM 18 A. Okay. I wrote it down as I gave it to him on a piece of
04:29PM 19 paper that I had. So, I just copied it in case something
04:30PM 20 happened to it. Just to back it up.

04:30PM 21 Q. When you were given the list, was it one size of paper?

04:30PM 22 A. It was. It was one size.

04:30PM 23 Q. And what was the size of paper you wrote it on?

04:30PM 24 A. He had given me a sheet, and I just used like a little
04:30PM 25 notepad, like a little yellow notepad to rewrite it.

04:30PM 1 Q. And what did you do with -- with that list?

04:30PM 2 A. I gave it to Joe.

04:30PM 3 Q. And what did you do with the original list you were
04:30PM 4 given?

04:30PM 5 A. That's what I gave to -- I kept -- I kept the list in
04:30PM 6 case something happened to it, and then I gave the other one
04:30PM 7 to Joe.

04:30PM 8 Q. Do you still have the list today?

04:30PM 9 A. No.

04:30PM 10 Q. What did you do with it?

04:30PM 11 A. I destroyed it.

04:30PM 12 Q. How many names were on the list?

04:30PM 13 A. Six. Five. Five or six.

04:30PM 14 Q. Who were some of the people that you remember being on
04:30PM 15 the list that you passed along?

04:31PM 16 A. Frank Burkhardt, BK, Dave Micche, Sizetek or -- I can't
04:31PM 17 remember.

04:31PM 18 **THE COURT:** Can you keep your voice up.

04:31PM 19 **MR. SINGER:** I'm sorry, I couldn't hear.

04:31PM 20 **THE WITNESS:** Sorry. Frank Burkhardt, BK, Dave
04:31PM 21 Micche, I can't pronounce the other guy's name, Sizetek, or
04:31PM 22 Siztek.

04:31PM 23 **BY MR. TRIPI:**

04:31PM 24 Q. Who was Tom Serio?

04:31PM 25 A. Tom was Ron's brother.

04:31PM 1 Q. Were they close?

04:31PM 2 A. They were.

04:31PM 3 Q. At times, was Tom involved in Ron's operations?

04:31PM 4 A. Never when I was around. I don't know.

04:31PM 5 Q. Who is Mario Vacanti?

04:31PM 6 A. Mario was a close friend of Ron's.

04:31PM 7 Q. Is he someone who would get marijuana?

04:31PM 8 A. Yes, from Ron.

04:31PM 9 Q. A lot of marijuana?

04:31PM 10 A. Yes.

04:31PM 11 Q. To distribute?

04:31PM 12 A. Yes.

04:31PM 13 Q. Who is TS?

04:31PM 14 A. TS was again in Ron's circle, who Ron was distributing

04:32PM 15 marijuana to.

04:32PM 16 Q. Who was Mark Falzone?

04:32PM 17 A. Mark Falzone was a close friend of Ron's and, again, he

04:32PM 18 was in his inner circle.

04:32PM 19 Q. Who was Chris Baker?

04:32PM 20 A. I don't know Chris baker.

04:32PM 21 Q. Now, did there come a time where you were provided a name

04:32PM 22 of BK or RK?

04:32PM 23 A. Yes.

04:32PM 24 Q. Who provided you that name?

04:32PM 25 A. Ron had provided it to Mike, and Mike provided it to me.

04:32PM 1 Q. And what were your instructions as it related to BK?

04:32PM 2 A. Find out if he was an informant.

04:33PM 3 Q. And what did -- so what did you do?

04:33PM 4 A. I gave it to Joe.

04:33PM 5 Q. Gave what to Joe?

04:33PM 6 A. The name.

04:33PM 7 Q. Did you say it verbally, or did you have to write that

04:33PM 8 down?

04:33PM 9 A. No, I gave it to him. We met, and I gave to him. There

04:33PM 10 was no need to write that down.

04:33PM 11 Q. So you expressed that name verbally?

04:33PM 12 A. I expressed it verbally.

04:33PM 13 Q. And describe your conversation with the defendant when

04:33PM 14 you met.

04:33PM 15 A. I told him there's a concern, Ron works closely with this

04:33PM 16 guy, and he wants to know if -- there was a rumor that he got

04:33PM 17 busted, if he had turned and become an informant.

04:33PM 18 Q. Who had told you that RK got busted?

04:33PM 19 A. Again, I spoke a lot with Masecchia, so Masecchia was

04:33PM 20 concerned as well.

04:33PM 21 Q. So Masecchia told you?

04:33PM 22 A. Yes.

04:33PM 23 Q. About RK getting busted?

04:33PM 24 A. Yes.

04:33PM 25 Q. And that Ron was concerned?

04:33PM 1 A. Yes.

04:33PM 2 Q. When you told Joe the name RK, describe your conversation
04:34PM 3 with the defendant.

04:34PM 4 A. I told him there's concern -- Ron had given me this name,
04:34PM 5 BK, and he's concerned that -- that he had gotten busted and
04:34PM 6 he might have flipped, he might have become an informant, and
04:34PM 7 if he could check it out and verify that.

04:34PM 8 Q. When you asked the defendant to check it out, what did he
04:34PM 9 say?

04:34PM 10 A. He said okay, I'll get back to you.

04:34PM 11 Q. And did the defendant get back to you regarding RK?

04:34PM 12 A. Yes.

04:34PM 13 Q. How much time went by before the defendant got back to
04:34PM 14 you regarding RK?

04:34PM 15 A. Week, week and a half.

04:34PM 16 Q. So there was some delay?

04:34PM 17 A. There was a little delay, yes.

04:34PM 18 Q. Describe your next conversation with the defendant about
04:35PM 19 RK.

04:35PM 20 A. I met with him, and he had told me he was in fact an
04:35PM 21 informant.

04:35PM 22 Q. And did the defendant elaborate at all?

04:35PM 23 A. No, he just said that he had been arrested, and he didn't
04:35PM 24 say what agency or who he's working with, but he had been --
04:35PM 25 he's an informant.

04:35PM 1 Q. And what did you do with that information?

04:35PM 2 A. I relayed it to Mike. I immediately called Mike, and met
04:35PM 3 him, and told him your speculation was right. And then he
04:35PM 4 reached out to Ron.

04:35PM 5 Q. How do you know Masecchia reached out to Ron?

04:35PM 6 A. He said he was going to.

04:35PM 7 Q. Okay.

04:35PM 8 A. I mean, I don't know. I didn't see it. But he said he
04:35PM 9 would reach out to him.

04:35PM 10 Q. Did there come a time when you -- when a request was made
04:35PM 11 of you regarding a TS?

04:36PM 12 A. Yes.

04:36PM 13 Q. When was that request in relation to the RK request?

04:36PM 14 A. It was within the same time frame. Gave me two names to
04:36PM 15 check out. I did RK first, and then TS came not far after
04:36PM 16 that.

04:36PM 17 Q. And who gave you the name TS?

04:36PM 18 A. That came from Ron, to Mike, to me.

04:36PM 19 Q. And what was -- what did Mike explain to you regarding
04:36PM 20 TS?

04:36PM 21 A. Again, there was a concern if he was an informant, to
04:36PM 22 relay that to Joe and find out.

04:36PM 23 Q. So what did you do?

04:36PM 24 A. I did. I met with him again. Called him, and I says,
04:36PM 25 there's another name here that they're concerned about. I

04:36PM 1 gave him the name.

04:36PM 2 Q. Was that an in-person meeting?

04:36PM 3 A. Yes.

04:36PM 4 Q. Where did you meet?

04:36PM 5 A. I believe it was on -- it was it at a bar downtown,

04:36PM 6 Chippewa.

04:36PM 7 Q. What did you tell the defendant about TS?

04:37PM 8 A. I told him Mike is -- Mike is concerned, Ron's concerned

04:37PM 9 that this guy got busted, and he could be an informant,

04:37PM 10 because Ron was doing a lot of businesses with him. So, it

04:37PM 11 was a big concern.

04:37PM 12 Q. What do you mean, Ron was doing a lot of business with

04:37PM 13 Tom TS?

04:37PM 14 A. When Ron was getting the stuff from California and

04:37PM 15 British Columbia and New York, it was a high grade hydro

04:37PM 16 product, so these are the -- TS was one of his guys in his

04:37PM 17 group that bought from him regularly.

04:37PM 18 Q. And what did the defendant agree to do regarding TS if

04:37PM 19 anything?

04:37PM 20 A. He would -- he agreed to check it out and get back to me.

04:37PM 21 Q. And was there a time delay?

04:37PM 22 A. There was.

04:37PM 23 Q. Describe what happened next in that regard.

04:37PM 24 A. About the same time delay, about a week, week or so,

04:37PM 25 reached back out to him, said did you find anything out with

04:37PM 1 TS? We met, again, always met out. I believe that time it
04:38PM 2 was at Mother's. And I says, what happened, what had
04:38PM 3 transpired. And he had mentioned that he was an informant,
04:38PM 4 he got busted.

04:38PM 5 Q. By 2013 into '14, moving forward, were you aware -- you
04:38PM 6 mentioned trucks from California, British Columbia. Were you
04:38PM 7 aware of specific trucking routes and transfer locations?

04:38PM 8 A. I was not.

04:38PM 9 Q. When you provided the defendant with a list of names and
04:38PM 10 phone numbers that were in Serio's sort of inner circle, I
04:39PM 11 just want to circle back to that, what specifically did the
04:39PM 12 defendant say about that?

04:39PM 13 A. He got back to me, and he ran those numbers through. And
04:39PM 14 none of them were tapped or involved in any investigation or
04:39PM 15 showed up, from what he told me.

04:39PM 16 Q. Did he tell you how he was going to check into the phone
04:39PM 17 numbers?

04:39PM 18 A. No.

04:39PM 19 Q. But essentially, the report back was all clear?

04:39PM 20 A. All clear.

04:39PM 21 Q. In or about 2015, a little bit further in time, did --
04:39PM 22 did you become aware of some information regarding Mario
04:39PM 23 Vacanti?

04:39PM 24 A. Yes.

04:39PM 25 Q. How did you become aware of information regarding Mario

1	Vacanti?
---	----------

2 A. Mario was good friends with Ron, and he was within Ron's
3 inner circle. So --

4 | Q. Was something brought to your attention about Vacanti?

5 A. Yes. He had started moving more marijuana from whatever
6 contact I believe he had in California. He had also had a
7 relationship with Ron.

8 Q. Did you have a conversation with the defendant about
9 Mario Vacanti?

10	A. I did.
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11 | Q. Can you describe what that conversation consisted of?

12 A. This is -- this is another guy in Ron's inner circle,
13 he's close with. If he can provide any information to make
14 sure he's okay. And he said I'll get back to you.

15 Q. And when the defendant got back to you, did he get back
16 to you?

17	A. Yes.
----	---------

18 | Q. What, if anything, did he tell you about Mario Vacanti?

19 | A. There was nothing going on with him.

20 | Q. What do you mean by there was nothing going on with him?

21 A. There was not -- there was no investigation or anything
22 happening.

23 Q. Did there come a point at a different point in time where
24 you learned Vacanti was under investigation?

25	A.	No.	No.
----	----	-----	-----

04:41PM 1 Q. Were you ever requested to look into whether Frank
04:42PM 2 Burkhart was cooperating?
04:42PM 3 A. Yes.
04:42PM 4 Q. Who asked you to do that?
04:42PM 5 A. That came from Ron, to Mike, to me.
04:42PM 6 Q. And did you have a conversation with the defendant about
04:42PM 7 that?
04:42PM 8 A. Yes.
04:42PM 9 Q. And what, if anything, did you learn?
04:42PM 10 A. He was not.
04:42PM 11 Q. Did you report that back?
04:42PM 12 A. I did.
04:42PM 13 Q. Did there come a point in time where you were provided --
04:42PM 14 you were made aware of an investigation into an Anthony
04:42PM 15 Anastasia?
04:42PM 16 A. Yes.
04:42PM 17 Q. Okay. Who was Anthony Anastasia?
04:42PM 18 A. He had bar tended at Gables. And he had gotten busted
04:42PM 19 for cocaine, and was somebody that I had boughten cocaine
04:42PM 20 from.
04:42PM 21 Q. Okay. You had boughten -- you had purchased cocaine from
04:42PM 22 Anastasia in the past?
04:42PM 23 A. Yes.
04:42PM 24 Q. Cocaine for your personal use?
04:43PM 25 A. Just personal use.

04:43PM 1 Q. And before Anastasia was, you said, busted, do you mean
04:43PM 2 arrested?

04:43PM 3 A. Let me rephrase that. He was arrested, yes.

04:43PM 4 Q. Did the defendant make you aware of an investigation into
04:43PM 5 Anastasia before Anastasia was arrested?

04:43PM 6 A. Yes. Because I believe he -- it was his investigation, I
04:43PM 7 believe.

04:43PM 8 Q. Okay. What did the defendant tell you about the
04:43PM 9 investigation?

04:43PM 10 A. He said stay away from him, he's hot, there's an
04:43PM 11 investigation going on.

04:43PM 12 Q. When the defendant told you stay away from him, he's hot,
04:43PM 13 what did you understand that to mean?

04:43PM 14 A. Meaning not to buy cocaine for personal use from him.
04:43PM 15 Just stay away. Leave him alone.

04:43PM 16 Q. What was your perception as to why the defendant told you
04:44PM 17 to stay away from Anastasia?

04:44PM 18 A. Because there was an investigation, and he wanted to make
04:44PM 19 sure that I was not involved or I was going to be okay.

04:44PM 20 Q. Now you indicated before that you would work out from
04:44PM 21 time to time at a gym with the defendant?

04:44PM 22 A. Yes.

04:44PM 23 Q. The Fitness Factory?

04:44PM 24 A. Fitness Factory, yes.

04:44PM 25 Q. And that's on Delaware Avenue in Kenmore?

04:44PM 1 A. Yes.

04:44PM 2 Q. Was there another individual who would work out at that
04:44PM 3 gym on occasion named JD?

04:44PM 4 A. Yes.

04:44PM 5 Q. Was there an interaction that you observed between the
04:44PM 6 defendant and JD at Fitness Factory that led to a
04:45PM 7 conversation about JD?

04:45PM 8 A. Yes.

04:45PM 9 Q. Describe what happened.

04:45PM 10 A. Joe would work out there.

04:45PM 11 Q. Can you use last names since they're both named Joe?

04:45PM 12 A. JD --

04:45PM 13 **MR. SINGER:** Judge, I'm going to object. Can we just
04:45PM 14 approach quickly?

04:45PM 15 **THE COURT:** You sure can.

04:45PM 16 (Sidebar discussion held on the record.)

04:45PM 17 **MR. SINGER:** We haven't made a link regarding JD to
04:45PM 18 the current conspiracy, and so I don't know where we're going
04:45PM 19 here.

04:45PM 20 **THE COURT:** Yeah, I don't either.

04:45PM 21 **MR. TRIPI:** We don't need to, he tells him that JD is
04:45PM 22 an informant. That's a breach of oath and duty. He's not
04:45PM 23 related to the marijuana conspiracy, it's just a separate
04:45PM 24 thing that Joe did that --

04:45PM 25 **THE COURT:** So, tell me here, if he's an informant,

04:45PM 1 he's --

04:45PM 2 **MR. TRIPI:** He's tipping off an informant.

04:45PM 3 **THE COURT:** If he tries to sell to you --

04:46PM 4 **MR. TRIPI:** He's just making Selva aware that JD is
04:46PM 5 another informant. He worked out at the gym, that's how it
04:46PM 6 came up.

04:46PM 7 **MR. SINGER:** How does this relate to the conspiracy
04:46PM 8 that Selva's in.

04:46PM 9 **THE COURT:** He's protecting Selva.

04:46PM 10 **MR. SINGER:** But the missing link on this, Judge, is
04:46PM 11 JD's connection to a conspiracy. Like, I can understand what
04:46PM 12 you propose in your hypothetical if JD is a potential buyer in
04:46PM 13 the Serio conspiracy or player in the Serio conspiracy --

04:46PM 14 **THE COURT:** He doesn't have to be. If he can get
04:46PM 15 Selva in trouble, and Bongiovanni has inside information that
04:46PM 16 Selva can use to protect himself, that is, I can buy drugs
04:46PM 17 from Joe Smith, I can buy drugs from John Brown, but I can't
04:46PM 18 buy drugs from --

04:46PM 19 **MR. TRIPI:** JD.

04:46PM 20 **THE COURT:** -- JD.

04:46PM 21 **MR. TRIPI:** Or nobody that we're involved with should
04:46PM 22 sell drugs to JD.

04:46PM 23 **MR. SINGER:** But what evidence is there that JD's
04:46PM 24 doing that? Doing any type of sales?

04:46PM 25 **THE COURT:** He's an informant.

04:46PM 1 **MR. TRIPI:** He doesn't have to be, he's an informant.

04:47PM 2 And he's informing Selva and, by proxy, the rest of them to

04:47PM 3 stay away from JD.

04:47PM 4 **THE COURT:** He's an informant in connection with

04:47PM 5 drugs.

04:47PM 6 **MR. TRIPI:** JD was a signed up DEA informant, he's

04:47PM 7 going to testify.

04:47PM 8 **THE COURT:** In connection with drugs?

04:47PM 9 **MR. TRIPI:** Yes, he's made purchases before.

04:47PM 10 **THE COURT:** Okay. No, I think it's relevant. The

04:47PM 11 objection is overruled.

04:47PM 12 (End of sidebar discussion.)

04:47PM 13 **THE COURT:** The objection is overruled.

04:47PM 14 **MR. TRIPI:** Proceed, Your Honor?

04:47PM 15 **THE COURT:** You can.

04:47PM 16 **BY MR. TRIPI:**

04:47PM 17 Q. That means you can answer, Mr. Selva.

04:47PM 18 What -- what happened at the gym that led to a

04:47PM 19 conversation between you and the defendant about Mr. JD?

04:47PM 20 A. JD was at the gym a lot at the same times when we would

04:47PM 21 go. And he had -- he had said hello to Joe. And then he --

04:47PM 22 the defendant -- JD had said hello to the defendant. And

04:47PM 23 then when he walked away, he had mentioned, he says, stay

04:47PM 24 away from him, he's a -- he's a paid informant.

04:48PM 25 Q. And was there something that precipitated that comment by

04:48PM 1 the defendant? Did you -- did you --

04:48PM 2 A. No. No, we seen him -- we saw him all the time, just
04:48PM 3 stay away.

04:48PM 4 Q. Do you remember what time frame this was?

04:48PM 5 A. I don't recall.

04:48PM 6 Q. I want to circle back to Mario Vacanti for a moment. Was
04:48PM 7 there a point in time where you went to Serio's house and
04:48PM 8 notified him of something regarding Vacanti?

04:48PM 9 A. When I went to Serio's house? I -- I -- I -- I don't
04:49PM 10 remember. Was there something that could refresh my memory?

04:49PM 11 **MR. TRIPI:** Just a moment, please.

04:49PM 12 **THE COURT:** Mr. Tripi, is this going to take a while?

04:49PM 13 **MR. TRIPI:** I'm sorry, Your Honor?

04:49PM 14 **THE COURT:** I'm thinking this may be a great time to
04:49PM 15 break for the day --

04:49PM 16 **MR. TRIPI:** That would be great.

04:49PM 17 **THE COURT:** -- instead of wasting the jury's time.

04:49PM 18 **MR. TRIPI:** Okay.

04:49PM 19 **THE COURT:** So let's do that, folks. So we will now
04:50PM 20 break for the day. So please remember the instructions that
04:50PM 21 I've given to you about not discussing this case with anyone,
04:50PM 22 including each other. Don't do any research on your own.
04:50PM 23 Don't use any tools of technology to research the case or to
04:50PM 24 communicate about the case.

04:50PM 25 Don't read or listen to or watch any news coverage of

the case on TV, on the radio, in the paper, on the internet,
if there is any while this case is in progress.

And don't make up your mind about anything until the
case is presented to you.

Be back here tomorrow morning at 9:30. Get a good
night's sleep. Drive carefully. Thank you, all.

(Jury excused at 4:50 p.m.)

THE COURT: Okay. Anything we need to do before I go
take a nap?

MR. TRIPI: No, I apologize for the fumbling at the
end of the day, Your Honor.

THE COURT: That's okay.

MR. SINGER: I have one thing to raise, but outside
the presence of Mr. Selva.

THE COURT: Okay. So, Mr. Selva, can you step down
and leave, please?

(Witness excused at 4:51 p.m.)

(Excerpt concluded at 4:51 p.m.)

* * * * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on February 21, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

TRANSCRIPT EXCERPT

TESTIMONY OF LOUIS SELVA - 2/21/24

W I T N E S S

P A G E

L O U I S S E L V A

2

DIRECT EXAMINATION BY MR. TRIPI:

2

E X H I B I T

P A G E

GOV Exhibit 215

17

GOV Exhibits 213-1 to 5

26